



## TAX ON INSURERS LAW



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## TAX ON INSURERS LAW



**CALIFORNIA CONSTITUTION ARTICLE XIII, SECTION 28**

**SEC. 28. Taxation of insurance companies.** (a) “Insurer,” as used in this section, includes insurance companies or associations and reciprocal or interinsurance exchanges together with their corporate or other attorneys in fact considered as a single unit, and the State Compensation Insurance Fund. As used in this paragraph, “companies” includes persons, partnerships, joint stock associations, companies and corporations.

(b) An annual tax is hereby imposed on each insurer doing business in this state on the base, at the rates, and subject to the deductions from the tax hereinafter specified.

(c) In the case of an insurer not transacting title insurance in this state, the “Basis of the annual tax” is, in respect to each year, the amount of gross premiums, less return premiums, received in such year by such insurer upon its business done in this state, other than premiums received for reinsurance and for ocean marine insurance.

In the case of an insurer transacting title insurance in this state, the “basis of the annual tax” is, in respect to each year, all income upon business done in this state, except:

- (1) Interest and dividends.
- (2) Rents from real property.
- (3) Profits from the sale or other disposition of investments.
- (4) Income from investments.

“Investments” as used in this subdivision includes property acquired by such insurer in the settlement or adjustment of claims against it but excludes investments in title plants and title records. Income derived directly or indirectly from the use of title plants and title records is included in the basis of the annual tax.

In the case of an insurer transacting title insurance in this state which has a trust department and does a trust business under the banking laws of this state, there shall be excluded from the basis of the annual tax imposed by this section, the income of, and from the assets of, such trust department and such trust business, if such income is taxed by this state or included in the measure of any tax imposed by this state.

(d) The rate of the tax to be applied to the basis of the annual tax in respect to each year is 2.35 percent.

(f) The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

- (1) Taxes upon their real estate.

(2) That an insurer transacting title insurance in this state which has a trust department or does a trust business under the banking laws of this state is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this state.

(3) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state; so long as such laws of such other state or county continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this paragraph (3) of subdivision (f).

The provisions of this paragraph (3) of subdivision (f) shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state or foreign country in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration in determining the propriety and extent of retaliatory action under this paragraph (3) of subdivision (f).

For the purposes of this paragraph (3) of subdivision (f) the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

The provisions of this paragraph (3) of subdivision (f) shall also be applicable to reciprocals or interinsurance exchanges and fraternal benefit societies.

(4) The tax on ocean marine insurance.

(5) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

(6) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon

corporations or others doing business in the state, other than taxes on income derived from its principal business as attorney in fact.

A corporate or other attorney in fact of each exchange shall annually compute the amount of tax that would be payable by it under prevailing law except for the provisions of this section, and any management fee due from each exchange to its corporate or other attorney in fact shall be reduced pro tanto by a sum equivalent to the amount so computed.

(g) Every insurer transacting the business of ocean marine insurance in this state shall annually pay to the state a tax measured by that proportion of the underwriting profit of such insurer from such insurance written in the United States, which the gross premiums of the insurer from such insurance written in this state bear to the gross premiums of the insurer from such insurance written within the United States, at the rate of 5 per centum, which tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such insurer, except taxes upon real estate, and such other taxes as may be assessed or levied against such insurer on account of any other class of insurance written by it. The Legislature shall define the terms "ocean marine insurance" and "underwriting profit," and shall provide for the assessment, levy, collection and enforcement of the ocean marine tax.

(h) The taxes provided for by this section shall be assessed by the State Board of Equalization.

(i) The Legislature, a majority of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates of taxes herein imposed upon insurers.

(j) This section is not intended to and does not change the law as it has previously existed with respect to the meaning of the words "gross premiums, less return premiums, received" as used in this article.

**History.**—New Section 28 adopted without substantive change from former Section 14½, effective November 6, 1974. Amended effective June 8, 1976, by deleting subdivision (e), revising subdivision (g) to omit reference to subdivision (e), and revising subdivision (i) changing "two-thirds" to "a majority."

**Note.**—Prior Section 14½ adopted November 3, 1942. Amendment adopted in 1949 deleted former (a) relating to effective date of section; renumbered former (e) as (d) and substituted 2.35 percent tax rate for tax rate which decreased each year from 2.55 percent in 1943 to 2.35 percent in 1947; deleted former (f) relating to deductions from tax; deleted former (h) relating to real estate deduction; and renumbered former (b) as (a), (c) as (b), (d) as (c), (g) as (e), (i) as (f), (j) as (g), (k) as (h), (l) as (i), and (m) as (j). The 1952 amendment added "and the State Compensation Insurance Fund" to the first sentence of (a); added "the" following "rate of" in (d); and added (f)(5). The amendment of 1962 repealed the second paragraph of subdivision (e), which had become obsolete. The 1964 amendment revised the first sentence in (f)(3) and added all after the first sentence in (f)(3). The amendment of 1966 amended the first sentence of (a) by adding the words "together with their corporate or other attorneys in fact considered as a single unit,"; numbered the subdivision of (e) adding subdivisions (2) and (3); and added subdivision (6) to (f). Section 14½ repealed effective November 6, 1974.

**Construction.**—The gross premiums tax applies to all insurance companies and associations, whether fire or life, and whether doing business as stock concerns or mutual concerns. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.

Although in lieu of taxes on personal property, it is not, like the public utility gross receipts tax (prior to the amendment of Section 14 in 1933), a direct tax on property, but is a franchise tax exacted for the privilege of doing business in the State. Thus, ownership by the insurance company, and not the use to which the property is being put, is the factor determining freedom of personal property from local taxation. *Consolidated Title Security Co. v. Hopkins* (1934) 1 Cal.2d 414.

The tax imposed upon insurance companies is not a property tax but an excise tax for the privilege of doing business in the year preceding that in which the tax is assessed. Consequently, an insurance company is liable for a tax based upon its gross premiums received during a calendar year, notwithstanding the fact that on the first Monday of March of the following year the company was not doing business. Penalties accruing after the appointment of a liquidator are properly charged to the company. *Carpenter v. Peoples Mutual Life Insurance Co.* (1937) 10 Cal.2d 299.

Even prior to the enactment in 1937 of the provision of the Revenue and Taxation Code expressly authorizing such procedure, an assessment could be made in *any* year subsequent to that in which the company ceased doing business. The tax is an obligation of the taxpayer irrespective of its assessment by the State Board of Equalization, at least in a case in which the failure to levy the assessment at the proper time was due to the taxpayer's violation of its statutory duty to file the statements required of it and there is no showing that the delay in assessment has operated to its prejudice. *Carpenter v. Pacific Coast Insurance Assn.* (1937) 10 Cal.2d 304.

**Deduction of real property taxes (prior law).**—The provision for the deduction of the amount of taxes paid by an insurance company on real property owned by it in this State does not create an exemption but permits an offset or deduction. The offset or deduction is authorized where the insurance company owned the property at the time of payment of such taxes, although the property was not owned by such company at the time the taxes became a lien. *Northwestern Mutual Life Insurance Co. v. Johnson* (1936) 8 Cal.2d 42.

Flood control levies on real estate owned by an insurance company in this State that are special assessments conferring particular benefits on the land assessed, are not deductible from the gross premiums tax. *Northwestern Mutual Life Insurance Co. v. State Board of Equalization* (1946) 73 Cal.App.2d 548.

Where an insurance company moved its principal office in December 1952, it was entitled to deduct the real estate taxes paid by it on both the old office and the new office, even though such taxes were for the same tax year. *California-Western States Life Insurance Co. v. State Board of Equalization* (1959) 171 Cal.App.2d 801.

An insurer's occupation of two small rooms in a huge office complex entitled the insurer to claim the complex as its principal office because the complex was the insurer's only office in California. *J.C. Penney Insurance Company v. State Board of Equalization* (1979) 94 Cal.App.3d 685.

Effective date of repeal of principal office deduction was January 1, 1977. *California Comp. & Fire Co. v. State Board of Equalization* (1982) 132 Cal.App.3d 25.

**Dividends.**—A mutual life insurance company is not subject to taxation on that portion of a premium which is satisfied by the application of a dividend representing the excess of the previous year's premium over the actual cost of the insurance furnished. *Mutual Benefit Life Insurance Co. v. Richardson* (1923) 192 Cal. 369. [Cf. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.]

**Doing business.**—An insurance association organized in California to take over the business of a Nebraska association was, in accepting in this State the applications of the members of the foreign association to continue their insurance, doing business in this State. Assuming, however, that the contracts of insurance were made in their entirety outside the State, all amounts received on such contracts were subject to the tax, the association having withdrawn from the other State and thereafter conducted its business under its California license, and all payments being sent by mail to its office in California. *Western Travelers Accident Assn. v. Johnson* (1936) 14 Cal.App.2d 306.

A foreign insurance company is not subject to tax on premiums remitted directly to its home office by mail after it had actually ceased to do business in California and its certificate of authority had expired. *People v. Alliance Life Insurance Co.* (1944) 65 Cal.App.2d 808.

Renewal premiums collected at the Nevada office of a life insurance company which was incorporated in California and has its principal place of business in this State from policyholders residing in states in which the company is not licensed to do business are "premiums received \* \* \* upon its business done in this State" within the meaning of this section, where all of the company's services to these policyholders, other than the collection of premiums, are rendered to them at its home office in California. *Occidental Life Insurance Co. v. State Board of Equalization* (1956) 139 Cal.App.2d 468.

Foreign insurers who solicited business by mail from outside the state were "doing business" in California. The insurers' resident agents, even though designated as independent contractors, performed functions in this state on behalf of the insurers sufficient to form the "definite link" and "minimum connection" required to justify imposition of the tax on the insurers. *Illinois Com. Mens Assn. v. State Board of Equalization* (1983) 34 Cal.3d 839, appeal dismissed (1984) 466 U.S. 933.

**Estoppel.**—The State is not estopped to collect from insurance companies taxes for past years (1947 in this case) on the amounts paid to and retained by the companies' agents who solicited and obtained takers of bail bonds where this section levies taxes on the entire amount paid by the applicant to the bail agent, and where all insurance companies, prior to 1951, reported to the Insurance Commissioner as gross premiums only the amount actually received by them from the agents which practice was known by the Commissioner and the Attorney General and no objection was made by the Commissioner and the Attorney General and no objection was made by the Commissioner to any company for failure to report the whole bail bond premiums, there being no clear representation by a responsible agent of government as to what constitutes taxable premiums such as would satisfy an estoppel in connection with tax cases. *United States Fidelity and Guaranty Co. v. State Board of Equalization* (1956) 47 Cal.2d 384.

**Gross premiums.**—The term "gross premiums" includes the following: assessments (*Bankers Life Co. v. Richardson* (1923) 192 Cal. 113; *Western Travelers Accident Association v. Johnson* (1936) 14 Cal.App.2d 306); the consideration paid for annuity contracts (*Equitable Life Assur. Society v. Johnson* (1942) 53 Cal.App.2d 49); the full sums received by bail bond agents from those desiring bail bonds (*Groves v. City of Los Angeles* (1953) 40 Cal.2d 751).

Fees which are charged all applicants for membership in a mutual company do not constitute gross premiums within the meaning of this section, since they are not a part of the consideration paid for insurance, when the membership entitles the holder only to apply for insurance and not to receive it and the fees are not returnable if insurance is rejected or the member elects not to apply for it. *State Farm Mutual Automobile Insurance Co. v. Carpenter* (1939) 31 Cal.App.2d 178.

Amounts retained by an insurance company from wages due its employees participating in a voluntary retirement plan are not insurance premiums under this section where the company has no profit motive in establishing the plan. *California-Western States Life Insurance Co. v. State Board of Equalization* (1957) 151 Cal.App.2d 559.

Gross premiums include amounts paid as reimbursement for additional expense incurred in selling insurance on an installment basis such as additional bookkeeping expense and collection expense. *Allstate Insurance Co. v. State Board of Equalization* (1959) 169 Cal.App.2d 165.

Insurer developed “mini-net” plan pursuant to which existing group health insurance policyholders assumed the obligation to pay claims of the insured employees up to a certain “trigger-point” amount. Insurer was liable for claims above the trigger-point amount. Taxable gross premiums includes net premiums (calculated with reference to amounts paid out of policyholders’ funds) as well as loading (amounts paid directly to the insurer). *Metropolitan Life Insurance Co. v. State Board of Equalization* (1982) 32 Cal.3d 649.

Although a service charge in connection with a premium financing plan is part of taxable gross premiums, the interest charged in connection with the plan is nontaxable investment income. *Mercury Casualty Co. v. State Board of Equalization* (1983) 141 Cal.App.3d 43.

Auto club members paying for insurance obtained through the club on an installment basis paid the club a \$1 service fee along with each payment. The club retained the fee and forwarded the balance to the insurer. The service fee was part of the insurer’s taxable gross premiums. *Interinsurance Exchange v. State Board of Equalization* (1984) 156 Cal.App.3d 606.

ERISA does not preempt California’s method of taxation pursuant to *Metropolitan Life Insurance Co. v. State Board of Equalization* (1982) 32 Cal.3d 649. *General Motors Corp. v. California State Board of Equalization* (9th Cir. 1987) 815 F.2d 1305, cert. denied (1988) 485 U.S. 941.

The “true economic substance” of the insurer’s SFGP policy was that the employer bears the bulk of the insurance risk in acting as an independent insurer for all claims below the liability limit; that the employer in performing its independent obligations under the SFGP is not acting as “a mere agent” of the insurer for the collection of premiums; and the obligations of the insurer are not “inextricably intertwined” with those of the employers. Accordingly tax applies only to the amounts actually paid as premiums to the insurer and not to the amount of claims paid from employer funds. *Aetna Life Ins. Co. v. State Board of Equalization* (1992) 11 Cal.App.4th 1207.

An insurer issuing minimum premium policies taxable under *Metropolitan Life Ins. Co. v. State Board of Equalization* (1982) 32 Cal.3d 649 was not denied equal protection even though the same policies issued to policyholders who are Taft-Hartley Trusts would be taxed differently. *Great-West Life Assurance v. State Board of Equalization* (1993) 19 Cal.App.4th 1553.

Where only one factor in *Metropolitan Life Ins. Co. v. State Board of Equalization* (1982) 32 Cal.3d 649 was present (regarding claims administration by an insurance company) and the other three factors were absent and the trigger point was well above 100 percent of expected claims thereby shifting the insurance risk to the employer, the employer, and not the insurance company, was the insurer as to the pretrigger point claims paid from employer funds, and the insurance company was therefore not liable for gross premiums tax on that aspect of the contracts. *Prudential Ins. Co. v. State Board of Equalization* (1993) 21 Cal.App.4th 458.

The amount of an insurer’s taxable gross premiums does not include the amount of claims paid out of contractholder’s funds when the insurer is fulfilling an administrative services contract and not providing insurance. *Lincoln National Life Insurance Co. v. State Board of Equalization* (1994) 30 Cal.App.4th 1411.

**In lieu.**—The “in lieu” provision of Article XIII Section 14½ (now Article XIII Section 28) does not prevent the application of the state franchise tax to the net income of a corporate insurance agent. The franchise tax is exacted for the privilege of doing business in a corporate capacity. *Edward Brown & Sons v. McColgan* (1942) 53 Cal.App.2d 504.

A revenue ordinance imposing a tax on a person engaged in the business of soliciting, effecting and negotiating undertakings of bail as agent of an insurance company is invalid under this section. *Groves v. City of Los Angeles* (1949) 93 Cal.App.2d 17; *Groves v. City of Los Angeles* (1953) 40 Cal.2d 751.

The city business license tax applies to commissions received by an insurance broker. *Marsh & McClellan of California, Inc. v. City of Los Angeles* (1976) 62 Cal.App.3d 108.

The legal incidence of the sales tax is on the retailer even if the retailer passes the amount of the tax through to its customers. The in lieu provisions therefore do not prevent the imposition of sales tax on a retailer with respect to sales to insurance companies. *Occidental Life Ins. Co. v. State Board of Equalization* (1982) 135 Cal.App.3d 845.

An insurer doing insurance business in California subject to California’s gross premiums tax is exempt from all other state and local taxes except those listed in the “in lieu” provision. *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402 (disapproving *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco* (1982) 129 Cal.App.3d 876).

**Reciprocal or inter-insurance exchanges.**—Amounts designated by an inter-insurance exchange as savings to its subscribers but which amounts were actually paid by the exchange to attorney-in-fact were part of taxable gross premiums and should not be considered part of savings within the words “returned to subscribers and/or credited to their accounts as savings” as used in Ins. Code section 1530. *Industrial Indem. Exch. v. State Board of Equalization* (1945) 26 Cal.2d 772.

In computing its gross premiums tax liability for the business year 1964, the taxpayer, a reciprocal inter-insurance exchange, was not entitled to deduct savings dividends which it declared to subscribers (policyholders) in 1964 on policies expiring in 1965, to the extent that those dividends remained on the taxpayer’s books on December 31, 1964, as declared and unpaid. Such amounts were not “credited” to the accounts of subscribers, within the meaning of Section 1530 of the Insurance Code, until such time as the policies in question expired and the formerly unpaid dividends were either paid to the subscribers or applied by them against renewal premiums. *California State Auto. Assn. Inter-Insurance Bureau v. State Board of Equalization* (1974) 44 Cal.App.3d 13.

**Reduced rate.**—Premiums qualify for the .50 percent reduced rate under section 12202 only if: 1) they are from policies or contracts issued to a pension plan or profit sharing plan; and 2) the plan is exempt or qualified under section 401(a), 403(b), 404, 408(b), or 501(a) of the Internal Revenue Code. *Transamerica Occidental Life Insurance Co. v. State Board of Equalization* (1991) 232 Cal.App.3d 1048.

**Retaliatory tax.**—If an insurance company when taxed here at the usual rate, pays an amount actually greater than a California company would have been required to pay on the same basis in the home state of the foreign company, no retaliatory tax is to be exacted, notwithstanding the fact that the California rate may be less than the corresponding rate in the other state. Retaliatory laws are to be strictly construed, and the ultimate effect of the tax is determinative. *Bankers Life Co. v. Richardson* (1923) 192 Cal. 113.

Sections 685–685.3 of the Insurance Code may be carried out as to an insurer from a state which discriminates against California insurers. The sections are not unconstitutional under Article XIII, Section 14½, subdivision (f) as it read prior to amendment in 1964. *Franklin Life Insurance Company v. State Board of Equalization* (1965) 63 Cal.2d 222; *Atlantic Insurance Co. v. State Board of Equalization* (1967) 255 Cal.App.2d 1, appeal dismissed (1968) 390 U.S. 529.

The 1964 amendment to subdivision (f)(3) applies to all foreign insurers regardless of when they were certified to transact business in California, but applies prospectively beginning with year 1965. *Western and Southern Life Insurance Co. v. State Board of Equalization* (1970) 4 Cal.App.3d 21.

Section 685 of the Insurance Code violates neither the Commerce nor Equal Protection Clauses of the United States Constitution *Western and Southern Life Insurance Company v. State Board of Equalization of California* (1981) 451 U.S. 648.

Arizona's tax on the business of workers' compensation insurance must be included in an Arizona insurer's calculation of California retaliatory tax. Although the Arizona tax was earmarked for a specific purpose, it was not a charge for benefits conferred on the insurer and it was therefore not a "special purpose obligation or assessment." *American Alliance Ins. Co. v. State Board of Equalization* (1982) 134 Cal.App.3d 601.

**Return premiums.**—The term "return premiums" refers to that portion of the gross premiums received by an insurance company which has been unearned and which the company is lawfully bound to return. It does not include dividends paid to members of a mutual company. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.

The cash or surrender values paid upon the cancellation of life policies are not "return premiums," but values paid on the cancellation of pure annuity contracts prior to the starting of payments to the annuitant are by contract "return premiums" within the constitutional meaning. *Equitable Life Assur. Society v. Johnson* (1942) 53 Cal.App.2d 49.

**Trust business of title companies.**—The levy of a franchise tax on the trust business of a title insurance company for 1943 measured by the income of its trust business in 1942 is not a tax upon its 1942 trust business in violation of the effective date, December 31, 1942, of this section. *Title Insurance and Trust Co. v. Franchise Tax Board* (1956) 145 Cal.App.2d 60.



## PART 7. INSURANCE TAXATION \*

Enacted Statutes 1941, Chapter 113; amended Statutes 1943, Chapters 461, 956; Statutes 1945, Chapter 1040; Statutes 1951, Chapters 806, 917; Statutes 1957, Chapters 139, 1179, 1189, 2314; Statutes 1959, Chapters 39, 2174; Statutes 1961, Chapters 44, 740; Statutes 1963, Chapters 1527, 1909; Statutes 1963 (Extra Session), Chapter 3; Statutes 1965, Chapters 510, 679; Statutes 1966 (First Extra Session), Chapter 144; Statutes 1967, Chapters 818, 1007; Statutes 1968, Chapter 1347; Statutes 1969, Chapters 736, 860, 1455; Statutes 1971, Chapter 1634; Statutes 1973, Chapter 665; Statutes 1974, Chapters 311, 610, 1516; Statutes 1975, Chapter 661; Statutes 1976, Chapter 534; Statutes 1977, Chapter 921; Statutes 1978, Chapter 827; Statutes 1980, Chapter 944. Statutes 1981, Chapter 820. Statutes 1982, Chapters 5 (First Extra Session), 327, 454, and 684. Statutes 1983, Chapters 142 and 1092. Statutes 1984, Chapters 39, 930, 1020.

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|------------|--|
| Chapter 1. | General Provisions. §§ 12001-12008.                          |
| 2.         | Ocean Marine Insurance. §§ 12071-12107.                      |
| 3.         | All Insurance Other Than Ocean Marine. §§ 12201-12260.       |
| 3.5.       | Retaliatory Taxes, Licenses and Fees. §§ 12281-12290.        |
| 4.         | Assessment and Effect of Tax. §§ 12301-12495.                |
| 5.         | Payment and Collection. §§ 12601-12691.                      |
| 6.         | Suspension of Rights of Delinquent Insurers. §§ 12801-12834. |
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## CHAPTER 1. GENERAL PROVISIONS

## Article 1. Definitions

- |          |                           |
|----------|---------------------------|
| § 12001. | Construction.             |
| § 12002. | "Ocean marine insurance." |
| § 12003. | "Insurer."                |
| § 12004. | "Marine insurer."         |
| § 12005. | "Taxes."                  |
| § 12006. | "Board."                  |
| § 12007. | "Commissioner."           |
| § 12008. | "Controller."             |

12001. **Construction.** Unless the context otherwise requires, the definitions set forth in this article govern the construction of this part.

12002. **"Ocean marine insurance."** "Ocean marine insurance" means insurance written within this state upon hulls, freights, or disbursements, or upon goods, wares, merchandise, and all other personal property and interests therein, in course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, any portion of which exportation, importation, transportation, navigation, transit, or shipment is upon any ocean, and upon the property while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident to or in connection with the shipment or transportation. "Ocean marine insurance" includes marine builders and war risk insurance.

"Ocean marine insurance" does not, for the purpose of taxation of such insurance as provided in subdivision (g) of Section 28 of Article XIII of the Constitution, include insurance written upon:

\* The provisions of this part, except as otherwise noted, became effective July 1, 1943. For cases relating to insurance taxation see annotations to Article XIII, Section 28 of the Constitution.

(a) A hull, which is not a documented vessel registered with the Transportation Department of the United States; or

(b) Anything carried in, attached to, used in transportation of or any risk written in connection with any hull defined in (a) above, unless:

The insurance is upon a customary ocean marine form and such hull and the risks mentioned in (b) above are covered for one who is in the business of:

- (1) Renting or chartering boats;
- (2) Using boats himself for commercial purposes; or
- (3) Building or repairing boats.

Insurance not included in "ocean marine insurance" by this section shall be taxed in accordance with the other provisions of subdivision (g) of Section 28 of Article XIII of the Constitution.

The 1969 amendment of this section shall be construed as a restatement and continuation of the law existing prior to such amendment.

**History.**—Stats. 1969, p. 1700, in effect November 10, 1969, added all language following the first paragraph. Stats. 1974, p. 619, operative November 6, 1974, substituted "subdivision (g) of Section 28" for "subsection (g) of Section 14½" and "subdivision (g) of Section 28" for "Section 14½."

12003. **"Insurer."** "Insurer" as used in this part includes each of the following:

- (a) Insurance companies or associations.
- (b) Reciprocal or interinsurance exchanges, together with their corporate or other attorneys in fact considered as a single unit.
- (c) The State Compensation Insurance Fund.

As used in this section, "companies" includes persons, partnerships, joint stock associations, companies and corporations.

**History.**—Stats. 1943, p. 2832, in effect December 31, 1943, completely reworded the definition which formerly referred to business organizations organized to assume risks of loss. Stats. 1951, p. 2447, in effect September 22, 1951, added State Compensation Insurance Fund to the definition. Stats. 1963, p. 3904, operative January 1, 1964, divided the section into subdivisions (a), (b) and (c) and added "together with their corporate attorneys in fact considered as a single unit" to subdivision (b). Stats. 1967, p. 2599, in effect November 8, 1967, added "or other" to (b) and moved the language defining "companies" from (c) to the last sentence of the section.

**Note.**—Stats. 1951, p. 2447, amending Sections 202, 12003 and former Section 12264 of the Revenue and Taxation Code, provides that if any one of its provisions is held invalid the remainder of the act shall also be deemed invalid.

**Construction.**—The gross premiums tax applies to all insurance companies and associations, whether fire or life, and whether doing business as stock concerns or mutual concerns. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.

**Operative date of 1963 amendments.**—The 1963 amendment to this section and to Section 1530 of the Insurance Code, which added corporate attorneys in fact for reciprocal or interinsurance exchanges to the definition of "insurer," were effective as of the income year beginning January 1, 1964, and did not operate to relieve the taxpayer, a corporate attorney in fact for an interinsurance exchange, from franchise tax for the taxable year 1964, as measured by its net income in 1963. *Farmers Underwriters Ass'n v. Franchise Tax Board* (1966) 242 Cal.App.2d 589.

12004. **"Marine insurer."** "Marine insurer" means an insurer transacting ocean marine insurance.

12005. **"Taxes."** "Taxes" means the taxes assessed and levied, or which may be assessed and levied, under the provisions of Section 28 of Article XIII of the State Constitution and of this part.

**History.**—Added by Stats. 1961, p. 1980, operative January 1, 1962. Stats. 1974, p. 619, operative November 6, 1974, substituted "Section 28" for "Section 14½."



12006. **“Board.”** “Board” means the State Board of Equalization.

History.—Added by Stats. 1961, p. 1980, operative January 1, 1962.

12007. **“Commissioner.”** “Commissioner” means the State Insurance Commissioner.

History.—Added by Stats. 1961, p. 1980, operative January 1, 1962.

12008. **“Controller.”** “Controller” means the State Controller.

History.—Added by Stats. 1961, p. 1980, operative January 1, 1962.

## CHAPTER 2. OCEAN MARINE INSURANCE

Article 1. Definitions. §§ 12071–12078.

2. Basis of Tax for Ocean Marine Insurance. §§ 12101–12107.

### Article 1. Definitions

§ 12071. Application of definitions.

§ 12072. “Current calendar year.”

§ 12073. “Underwriting profit.”

§ 12074. “Net earned premiums.”

§ 12075. “Losses incurred.”

§ 12076. “Expenses incurred.”

§ 12077. “Specific expenses.”

§ 12078. “General expenses.”

12071. **Application of definitions.** The definitions contained in this article apply with respect to ocean marine insurance.

History.—Stats. 1961, p. 1980, operative January 1, 1962, substituted “with respect to ocean marine insurance” for “only to this chapter”.

12072. **“Current calendar year.”** “Current calendar year” means the calendar year for which underwriting profit is computed pursuant to Section 12073.

12073. **“Underwriting profit.”** “Underwriting profit,” as respects any one calendar year, means the amount arrived at by deducting from the net earned premiums of that calendar year on ocean marine insurance contracts written within the United States:

(a) Losses incurred.

(b) Expenses incurred.

In arriving at “underwriting profit” there shall not be deducted as expenses incurred an amount exceeding 40 percent of the gross premiums on ocean marine insurance contracts written during the current calendar year.

12074. **“Net earned premiums.”** “Net earned premiums” means the amount arrived at by:

(a) Deducting all return premiums, premiums on policies not taken, and premiums paid for reinsurance, from

(b) Gross premiums on ocean marine insurance contracts written during the current calendar year, to which remainder is added

(c) Unearned premiums on outstanding ocean marine business at the end of the preceding calendar year, and from which sum is deducted

(d) Unearned premiums on outstanding ocean marine business at the end of the current calendar year.

“Gross premiums” and “return premiums.”—See annotations under Section 12221.

12075. **“Losses incurred.”** “Losses incurred” means gross losses incurred during the current calendar year under ocean marine contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collectible from any source applicable to the losses.

12076. **“Expenses incurred.”** “Expenses incurred” includes specific and general expenses incurred in the current calendar year on ocean marine contracts written within the United States.

12077. **“Specific expenses.”** “Specific expenses” means expenses incurred directly and specifically in connection with earned ocean marine premiums, including all commissions, agency expenses, taxes, licenses, fees, and loss-adjustment expenses, less recoveries or reimbursements on account of or in connection with the commissions or other expenses collected or collectible because of reinsurance or from any other source.

12078. **“General expenses.”** “General expenses” means the portion of expenses not chargeable specifically to a particular class of insurance which is allocated to earned ocean marine premiums, consisting of that proportion of general or overhead expenses, including salaries of officers and employees, printing and stationery, and taxes of this State and of the United States, which the net premiums of ocean marine insurance written by the insurer bear to the total net premiums from all classes of insurance written by it during the current calendar year.

## Article 2. Basis of Tax for Ocean Marine Insurance \*

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|----------|---|
| § 12101. | Tax levy; rate.   |
| § 12102. | In lieu of other taxes; exceptions.                     |
| § 12103. | Basis for computation.                                  |
| § 12104. | Computation on three-year basis.                        |
| § 12105. | Computation on less than three-year basis.              |
| § 12106. | Refunds to policyholders not included.                  |
| § 12107. | Date for interest, penalties and periods of limitation. |

12101. **Tax levy; rate.** Every insurer transacting the business of ocean marine insurance in this State shall annually pay to the State a tax measured by that portion of the underwriting profit of the insurer from ocean marine insurance written in the United States, which the gross premiums of the insurer from ocean marine insurance written in this State bear to the gross premiums of the insurer from ocean marine insurance written within the United States, at the rate of 5 percent.

12102. **In lieu of other taxes; exceptions.** The tax is in lieu of all other state, county and municipal taxes and licenses upon the marine insurer,

\* Stats. 1961, p. 1980, operative January 1, 1962, amended the title of Article 2 by substituting “Basis of Tax” for “Tax Base.”

except taxes upon real estate, any retaliatory exactions imposed by paragraph (3) of subdivision (f) of Section 28 of Article XIII of the Constitution, motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof, and taxes assessed or levied against the insurer on account of any other class of insurance written by it.

**History.**—Stats. 1961, p. 1980, operative January 1, 1962, added the language beginning with “any retaliatory” and ending with “operation thereof.” Stats. 1967, p. 2599, in effect November 8, 1967, deleted “the Legislature pursuant to” following “retaliatory exactions imposed by.” Stats. 1974, p. 619, operative November 6, 1974, substituted “Section 28” for “Section 14½.”

**In lieu tax.**—Although in lieu of taxes on personal property, it is not, like the former public utility gross receipts tax, a direct tax on property, but is a franchise tax exacted for the privilege of doing business in the state. Thus, ownership by the insurance company, and not the use to which the property is being put, is the factor determining freedom of personal property from local taxation. *Consolidated Title Security Co. v. Hopkins* (1934) 1 Cal.2d 414.

A revenue ordinance imposing a tax on a person engaged in the business of soliciting, effecting and negotiating undertakings of bail as agent of an insurance company is invalid. *Groves v. City of Los Angeles* (1949) 93 Cal.App.2d 17; *Groves v. City of Los Angeles* (1953) 40 Cal.2d 751.

**12103. Basis for computation.** Except as otherwise provided in Section 12105, the tax shall be computed each year upon the average annual underwriting profit of the insurer from ocean marine insurance during the preceding three calendar years.

**History.**—Added by Stats. 1961, p. 1980, operative January 1, 1962. Derived from former Section 12151.

**12104. Computation on three-year basis.** If the insurer has transacted ocean marine insurance in this State in each of the three calendar years immediately preceding the year in which a tax return is required to be filed, the tax shall be computed as follows:

(a) Divide the average annual premiums of the insurer from ocean marine insurance written by it in this State during the preceding three calendar years by the average annual premiums of the insurer from all ocean marine insurance written in the United States during such calendar years.

(b) Multiply the insurer’s average annual underwriting profit from ocean marine insurance written within the United States during the preceding three calendar years by the figure derived in (a).

(c) Multiply the amount derived in (b) by 5 percent.

**History.**—Added by Stats. 1961, p. 1980, operative January 1, 1962. Derived from former Section 12154.

**12105. Computation on less than three-year basis.** If the insurer has not transacted ocean marine insurance in this State in each of the three calendar years immediately preceding the year in which a tax return is required to be filed, its tax shall be computed on the basis of its premiums and underwriting profits in the last completed calendar year. As soon as the insurer comes within the terms of Section 12104, the taxes computed under the provisions of this section for the two preceding calendar years shall be adjusted to equal the amount of the first tax computed under Section 12104. The adjustment shall be shown as an addition to, or a credit against, the tax computed upon business done in the third calendar year or as soon thereafter as possible.

**History.**—Added by Stats. 1961, p. 1981, operative January 1, 1962. Derived from former Section 12153.

**12106. Refunds to policyholders not included.** In computing the tax of a marine insurer issuing participating policies, there shall not be included in underwriting profit the amounts refunded by the insurer on account of premiums previously paid by its policyholders.

**History.**—Added by Stats. 1961, p. 1981, operative January 1, 1962. Derived from former Section 12155.

**12107. Date for interest, penalties and periods of limitation.** Whenever in this part the date, April 1st, is used as the beginning date for the computation of interest, attachment of penalties, or the fixing of periods of limitation, the date, June 15th, shall be substituted in lieu thereof with respect to taxes for ocean marine insurance.

**History.**—Added by Stats. 1969, p. 1473, in effect August 14, 1969, operative January 1, 1970.

### CHAPTER 3. ALL INSURANCE OTHER THAN OCEAN MARINE

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|------------|---|
| Article 1. | General. §§ 12201–12210.                                    |
| 2.         | Basis of Tax for Other Than Title Insurers. §§ 12221–12222. |
| 3.         | Basis of Tax for Title Insurers. §§ 12231–12233.            |
| 4.         | Principal Office Deduction. § 12241.                        |
| 5.         | Prepayments. §§ 12251–12260.                                |

#### Article 1. General \*

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|------------|---|
| § 12201.   | Annual tax.   |
| § 12202.   | Rate of tax.  |
| § 12202.1. | Adjustment of rate of tax.                              |
| § 12203.   | State Compensation Insurance Fund subject to tax.       |
| § 12204.   | In lieu of other taxes; exceptions.                     |
| § 12205.   | Legislative intent.                                     |
| § 12206.   | Low income housing tax credit.                          |
| § 12208.   | Pilot project insurance tax credit.                     |
| § 12209.   | Community development financial institution tax credit. |
| § 12210.   | Disclosure of tax.                                      |

**12201. Annual tax.** Every insurer doing business in this State shall annually pay to the State a tax on the bases, at the rates, and subject to the deductions from the tax hereinafter specified. For purposes of the tax imposed by this chapter, “insurer” shall be deemed to include a home protection company as defined in Section 12740 of the Insurance Code.

**History.**—Stats. 1961, p. 1981, operative January 1, 1962, renumbered former Section 12251 as Section 12201 without other change. Stats. 1981, Ch. 820, in effect January 1, 1982, added the second sentence.

**Excise tax.**—The tax imposed upon insurance companies is not a property tax but an excise tax for the privilege of doing business in the year preceding that in which the tax is assessed. Consequently, an insurance company is liable for a tax based upon its gross premiums received during a calendar year, notwithstanding the fact that on the first Monday of March of the following year the company was not doing business. Penalties accruing after the appointment of a liquidator are properly charged to the company. *Carpenter v. Peoples Mutual Life Insurance Co.* (1937) 10 Cal.2d 299.

**Doing business.**—Foreign insurers who solicited business by mail from outside the state were “doing business” in California. The insurers’ resident agents, even though designated as independent contractors, performed functions in this state on behalf of the insurers sufficient to form the “definite link” and “minimum connection” required to justify imposition of the tax on the insurers. *Illinois Com. Mens Assn. v. State Board of Equalization* (1983) 34 Cal.3d 839, appeal dismissed (1984) 466 U.S. 933.

**12202. Rate of tax.** The rate of tax to be applied to the basis of the annual tax in respect to each year is 2.35 percent except the rate to be applied to the basis in respect to the years 1982, 1983, 1984, and 1985 is 2.33 percent and except that as to gross premiums received upon policies or contracts

\* The title of Article 1. Tax Base, commencing with former Section 12251 was amended to its present form by Stats. 1961, p. 1981, operative January 1, 1962.

issued in connection with a pension plan or profit-sharing plan exempt or qualified under Section 401(a), 403(b), 404, 408(b), or 501(a) of the United States Internal Revenue Code as they may be amended or renumbered from time to time, the rate of tax shall be the percentage set forth below opposite each year:

Year	Percentage
1960.....	2.15
1961.....	1.95
1962.....	1.75
1963.....	1.55
1964.....	1.35
1965 through 1968.....	1.00
1969 and each year thereafter.....	0.50

**History.**—Stats. 1961, p. 1981, operative January 1, 1962, renumbered former Section 12256 as Section 12202 without other change. Stats. 1963, p. 5009 (Extra Session), in effect October 31, 1963, added the words “the rate to be applied to the basis in respect to the years 1964, 1965, 1966, and 1967 is 2.33 percent and.” Stats. 1968, p. 2567, in effect November 13, 1968, added “403(b)”. Stats. 1969, p. 2976, in effect November 10, 1969, added the provision for the 0.50% rate to the table. Stats. 1976, Ch. 534, operative August 22, 1976, added “408(b)”. Stats. 1982, Ch. 327, in effect June 30, 1982, substituted “1982, 1983, 1984, and 1985” for “1964, 1965, 1966, and 1967” before “is 2.33”.

**Reduced rate.**—The reduced rate of Revenue and Taxation Code section 12202 applies only to premiums satisfying both requirements of that section: 1) they must be from policies or contracts issued to pension or profit-sharing plans; and 2) those plans must be exempt or qualified under Internal Revenue Code section 401(a), 403(b), 404, 408(b) or 501(a). *Transamerica Occidental Life Ins. Co. v. State Board of Equalization* (1991) 232 Cal.App.3d 1048.

**12202.1. Adjustment of rate of tax.** Notwithstanding the rate specified by Section 12202, the gross premiums tax rate paid by insurers for any premiums collected between November 8, 1988 and January 1, 1991 shall be adjusted by the Board of Equalization in January of each year so that the gross premiums tax revenues collected for each prior calendar year shall be sufficient to compensate for changes in such revenues, if any, including changes in anticipated revenues, arising from this act. In calculating the necessary adjustment, the Board of Equalization shall consider the growth in premiums in the most recent three year period, and the impact of general economic factors including, but not limited to, the inflation and interest rates.

**History.**—Adopted by voters, Prop 103, Sec. 6, in effect November 8, 1988.

**Prepayment judicial review denied.**—Article XIII, section 32 of the California Constitution prohibits the court from considering the challenge against this provision prior to the payment of tax, if any, assessed under its provisions. *Calfarm Insurance Co. v. Deukmejian* (1989) 48 Cal.3d 805.

**Section 12202.1 constitutional.**—This section is a proper delegation of legislative power to an administrative agency, and the constitutional grant of power to the Legislature in article XIII, section 28, subdivision (i), entails a similar grant of power to the electorate to legislate through the initiative process. *State Compensation Insurance Fund v. State Board of Equalization* (1993) 14 Cal.App.4th 1295.

**Tax rates.**—The rate set by the Board for 1989 was valid since the Board considered the three statutory factors, but the rate set for 1990 was invalid because the Board did not consider one of the statutory factors. The proper remedy was not to order a refund, but instead to remand to the Board to properly set the rate for 1990 by considering all the factors set forth in the statute. *Pacific Mutual Life Insurance Co. v. State Board of Equalization* (1996) 41 Cal.App.4th 1153.

**12203. State Compensation Insurance Fund subject to tax.** The State Compensation Insurance Fund shall annually pay a tax computed on the same bases, at the same rates, and subject to the same deductions specified in this chapter, as those applicable to private insurers.

**History.**—Stats. 1961, p. 1982, operative January 1, 1962, amended and renumbered former Section 12264 as Section 12203 and changed “article” to “chapter.” Stats. 1951, p. 2447 amending Sections 202, 12003 and former Section 12264 of the Revenue and Taxation Code, provides that if any one of its provisions is held invalid the remainder of the act shall also be deemed invalid.

**12204. In lieu of other taxes; exceptions.** The tax imposed on insurers by this chapter is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

- (a) Taxes upon their real estate.
- (b) Any retaliatory exactions imposed by paragraph (3) of subdivision (f) of Section 28 of Article XIII of the Constitution.
- (c) The tax on ocean marine insurance.
- (d) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.
- (e) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon corporations or others doing business in the state, other than taxes on income derived from its principal business as attorney in fact.

**History.**—Stats. 1961, p. 1982, operative January 1, 1962, amended and renumbered former Section 12263 as Section 12204. Subdivisions (a), (b) and (d) correspond to subdivisions (1), (2) and (3) of the former section. Subdivisions (c) and (e) were added by Stats. 1961, p. 1982. Stats. 1967, p. 2600, in effect November 8, 1967, deleted “the Legislature pursuant to” following “imposed by” in (c) and added (f). Stats. 1974, p. 620, operative November 6, 1974, substituted “Section 28” for “Section 14%.” Stats. 1996, Ch. 1063, in effect January 1, 1997, deleted subdivision (b) which read “That an insurer transacting title insurance in this state which has a trust department or does a trust business under the banking laws of this state is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this state.” and relettered former subdivisions (c), (d), (e), and (f) as (b), (c), (d), and (e), respectively.

**In lieu tax.**—Although in lieu of taxes on personal property, it is not like the former public utility gross receipts tax, a direct tax on property, but is a franchise tax exacted for the privilege of doing business in the State. Thus, ownership by the insurance company, and not the use to which the property is being put, is the factor determining freedom of personal property from local taxation. *Consolidated Title Security Co. v. Hopkins* (1934) 1 Cal.2d 414.

The “in lieu” provision of Article XIII Section 14% (now Article XIII Section 28) does not prevent the application of the state franchise tax to the net income of a corporate insurance agent. The franchise tax is exacted for the privilege of doing business in a corporate capacity. *Edward Brown & Sons v. McColgan* (1942) 53 Cal.App.2d 504.

A revenue ordinance imposing a tax on a person engaged in the business of soliciting, effecting and negotiating undertakings of bail as an agent of an insurance company is invalid. *Groves v. City of Los Angeles* (1949) 93 Cal.App.2d 17; *Groves v. City of Los Angeles* (1953) 40 Cal.2d 751.

The city business license tax applies to commissions received by an insurance broker. *Marsh & McClellan of California, Inc. v. City of Los Angeles* (1976) 62 Cal.App.3d 108.

The legal incidence of the sales tax is on the retailer even if the retailer passes the amount of the tax through to its customers. The in lieu provisions therefore do not prevent the imposition of sales tax on a retailer with respect to sales to insurance companies. *Occidental Life Ins. Co. v. State Board of Equalization* (1982) 135 Cal.App.3d 845.

An insurer doing insurance business in California subject to California’s gross premiums tax is exempt from all other state and local taxes except those listed in the “in lieu” provision. *Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402 (disapproving *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco* (1982) 129 Cal.App.3d 876).

**Trust business of title companies.**—The levy of a franchise tax on the trust business of a title insurance company for 1943 measured by the income of its trust business in 1942 is not a tax upon its 1942 trust business in violation of the effective date, December 31, 1942, of Section 14% of Article XIII, California Constitution. *Title Insurance and Trust Co. v. Franchise Tax Board* (1956) 145 Cal.App.2d 60.

**12205. Legislative intent.** It is the intent of the Legislature that the amount of the state low-income housing tax credit allocated to a project pursuant to Section 12206 shall not exceed an amount in addition to the federal tax credit that is necessary for the financial feasibility of the project and its viability throughout the extended use period.

**History.**—Added by Stats. 1993, Ch. 1222, in effect October 11, 1993.

**12206. Low income housing tax credit.** (a) (1) There shall be allowed as a credit against the “tax” (as defined by Section 12201) a state low-income housing tax credit in an amount equal to the amount determined in

subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit,



with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term “at risk of conversion,” with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.



(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read: If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable: The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), 6(F), 6(G), 6(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the state credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

**History.**—Added by Stats. 1993, Ch. 1222, in effect October 11, 1993. Stats. 1994, Ch. 1164, in effect January 1, 1995, substituted “(C)” for “(c)” after “pursuant to Section 42(d)(5)” in subparagraph (b)(2)(F); substituted “incentives” for “prepayment” after “is eligible for”, substituted “two” for “three” after “anytime in the”, and added “and the purchaser has . . . plan of action”, in subparagraph (c)(3)(B); substituted “Paragraph (3), (4), . . . 6(G), 6(I),” for “paragraph (3), (4), (6),” in subparagraph (f)(2); substituted “The” for “Notwithstanding subdivision (m), the” in subdivision (g); deleted subparagraph designation “(l)” following (h)” and deleted “, subject to the limitation in paragraph (2)” after “with respect thereto” in subdivision (h); deleted subparagraph (h)(2) which set up limitations on a low-income housing project after 18 years of the project; deleted subparagraph (i)(2)(F) which read: “A requirement that the housing sponsor provide the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.”; relettered subparagraphs “(G)”, “(H)”, “(I)” in subdivision (i) as “(F)”, “(G)”, and “(H)”, respectively; substituted “two or more” for “not less than three” after “basis consisting of”, and substituted “two” for “three” after “the use of” in subparagraph (j)(1); added “and demand” after “there is a need” in subparagraph (j)(3)(A)(i); added “that the proposed operating income” after “the project and” in subparagraph (j)(3)(A)(ii); deleted “for the low-income units,” after “and required entity,” substituted “eligible” for “qualified” after “percentage of the”, and substituted “eligible” for “qualified” after “development fee in the”, in subparagraph (j)(3)(A)(vii); substituted “a substantial number, as defined by the committee,” for “the greatest percentage of total square feet” after “families in which” in subparagraph (j)(3)(C)(i); deleted subparagraph (j)(3)(C)(vi) which read: “Projects located within a “difficult to develop area” or a “qualified census tract” as defined in Section 42(d)(5)(C) of the Internal Revenue Code.”; deleted subparagraph (j)(5) which guarantees at least 20 percent of the housing tax credits for rural areas; substituted “Franchise Tax Board” for “Tax Credit Allocation Committee” after the term “California” in subdivision (k); deleted subdivision (m) which set the total aggregate amount of the tax credit at \$35,000,000; and relettered the subdivision designations “(n)”, “(o)”, and “(p)” as “(m)”, “(n)”, and “(o)”, respectively. Stats. 1998, Ch. 9 (AB 168), in effect March 26, 1998, but operative for tax years, taxable years, or income years beginning on or after January 1, 1998, substituted “(A) Except as . . . calendar year thereafter” for “Thirty-five million dollars (\$35,000,000)” after “(1)” in, added subparagraph (B), and substituted a period for “; and” after “preceding calendar year” in (2), of subdivision (g). Stats. 2000, Ch. 3 (AB 1626), in effect February 23, 2000, deleted “or” after “paid on an investor note” in subparagraph (d)(1)(A)(i); deleted “or” after “year of the credit period” in subparagraph (d)(1)(A)(ii); substituted “Fifty million dollars (\$50,000,000) for the 1999 calendar year and each calendar year thereafter” for “Except as provided in subdivision (B), thirty-five million dollars (\$35,000,000) for the 1997 calendar year, and each calendar year thereafter” in subparagraph (g)(1)(A); deleted subparagraph (g)(1)(B) which provided “Fifty million dollars (\$50,000,000) for each of

the calendar years 1998 and 1999 calendar year and each calendar year thereafter"; substituted "if both of the following apply" for "if" after "threshold requirements of subparagraph (A)" in subparagraph (j)(3)(B); deleted "and" after "affordable to those tenants" in subparagraph (j)(3)(B)(1); and substituted "and more bedrooms" for "or more bedrooms" after "units with three" in subparagraph (j)(3)(C)(i). Stats. 2001, Ch. 668 (SB 73), in effect October 10, 2001, substituted "taxable" for "income" in subparagraphs (d)(1)(A)(ii), (e)(1), (e)(3) and subdivision (h), added "all" after "to the sum of" in subdivision (g) and substituted "Seventy million dollars . . . ." for "Fifty million dollars . . . ." in subparagraph (g)(1).

**12208. Pilot project insurance tax credit.** (a) There shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to the amount of the gross premiums tax due from the insurer on account of pilot project insurance for previously uninsured motorists.

(b) As used in this section "pilot project insurance for previously uninsured motorists" means motor vehicle liability insurance issued by an insurer under Article 5.5 (commencing with Section 11629.7) or Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, with respect to an insured who, at the time of the issuance, owned or operated a motor vehicle without proof of financial responsibility as defined in Section 16020 of the Vehicle Code, and any renewal of that insurance.

**History.**—Added by Stats. 1999, Ch. 808 (AB 1432), in effect January 1, 2000.

**12209. Community development financial institution tax credit.** (a) For each year beginning on or after January 1, 1999, and before January 1, 2007, there shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the year into a community development financial institution.

(b) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by subdivision (a) shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 17053.57, and Section 23657 shall not exceed ten million dollars (\$10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars (\$10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(d) The community development financial institution shall do all of the following:



(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a community development financial institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's California company identification number for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the State Board of Equalization, in the form and manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer's California company identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(e) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a community development financial institution qualified to receive qualified investments.

(2) Accept applications for certification from any community development financial institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (c). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the State Board of Equalization, in the form or manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective National Association of Insurance Commissioners company number and employer's tax identification number, the amount of the qualified investment made by each taxpayer, and the total amount of qualified investments.

(f) For purposes of this section:

(1) "Qualified investment" means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months.

(2) "Community development financial institution" means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(g) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another community development financial institution within 60 days, there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars (\$50,000), there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the next four years, or until the credit has been exhausted, whichever occurs first.

(i) The State Board of Equalization shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 31, 2007, and as of that date is repealed.

**History.**—Added by Stats. 1999, Ch. 821 (AB 145), in effect January 1, 2000. Stats. 2001, Ch. 535 (SB 409), in effect October 5, 2001, substituted "2007" for "2002" in subdivision (a), substituted "investment" for "deposit" in subdivision (a), added ", or its successor within" after "Organized Investment Network" in subdivision (c), substituted "investment" for deposit in subdivision (c), substituted "investments" for "deposits" in subdivision (c), added "However, if the aggregate . . . " after "each calendar year." in subdivision (c), added "Department of Insurance," after "Apply to the" in subparagraph (d)(1) and (d)(2), added "amount of the investment and the" after "certification of the" to subparagraph (d)(2), substituted "taxpayer, obtain the . . . of the certification." for "taxpayer prior to . . . from the taxpayer." in subparagraph (d)(2), renumbered subparagraph (d)(4) as subparagraph (d)(3) and subparagraph (d)(5) as subparagraph (d)(4), added "Department of Insurance," after "information to the" of subparagraph (d)(3), substituted "application" for "transmittal" in subparagraph (d)(3), substituted "(2)" for "(3)" in subparagraph (d)(3), substituted "Board of Equalization" for "board" in subparagraph (d)(4), added "Department of Insurance," after "Equalization and the" in subparagraph (d)(4), substituted "investment" for "deposit" in subparagraph (d)(4), added "Department of Insurance," prior to "California Organized Investment" in subdivision (e), substituted "investments" for "deposits" in subparagraph (e)(1), substituted "an" for "a deposit or equity" in subparagraph (e)(2), substituted "Board of Equalization" for "board" in subparagraph (e)(3), added "Department of Insurance," prior to "California Organized Investment" in subparagraph (e)(3), substituted "investment" for "deposit" in subparagraph (e)(3), substituted "investments" for "deposits" in subparagraph (e)(3), substituted "investment" for "deposit" in subparagraph (f)(1), added "or loan" after "means a deposit" in subparagraph (f)(1), deleted "that is" after "an equity investment," in subparagraph (f)(1), added "or an equity . . . investments must be" after "an equity investment," in subparagraph (f)(1), added "Department of Insurance" after "certified by the" in subparagraph (f)(2), substituted "investment" for "deposit" in subparagraph (g)(1), deleted "redeposited or" after "month and not" in subparagraph (g)(1), substituted "investment" for "deposit" in subparagraph (g)(2), substituted "taxable" for "income" in subparagraph (g)(2), relettered subdivision (i) as subdivision (j), added new subdivision (i), substituted "2007" for "2002" in subdivision (j) and deleted "However, any unused . . . credit is exhausted." in subdivision (j). Stats. 2002, Ch. 664 (AB 3034), in effect January 1, 2003, deleted "is" after "fifty thousand dollars (\$50,000) and" in the second sentence of subparagraph (f)(1), and added a comma after "Investment Network" in subdivision (i).

**12210. Disclosure of tax.** (a) A life insurer or life insurance agent shall inform his or her client of the tax imposed under this part.



(b) A life insurer or life insurance agent who quotes only one price that includes the gross premiums tax is exempt from compliance with the requirements of subdivision (a).

**History.**—Added by Stats. 2000, Ch. 614 (AB 2312), in effect January 1, 2001.

## Article 2. Basis of Tax for Other Than Title Insurers

§ 12221. “Gross premiums” as basis of tax.

§ 12222. Funds for annuity purchases.

**12221. “Gross premiums” as basis of tax.** In the case of an insurer not transacting title insurance in this State, the basis of the tax is, in respect to each year, the amount of gross premiums, less return premiums, received in such year by such insurer upon its business done in this State. “Gross premiums” do not include premiums received for reinsurance and for ocean marine insurance. Gross premiums of reciprocal or interinsurance exchanges shall be determined as provided in Section 1530 of the Insurance Code. For purposes of the tax imposed by this chapter, “gross premiums” shall be deemed to include home protection contract fees defined in Section 12740 of the Insurance Code.

**History.**—Added by Stats. 1961, p. 1982, operative January 1, 1962. Derived from former Section 12252. Stats. 1981, Ch. 820, in effect January 1, 1982, added the fourth sentence.

**Gross premiums.**—The term “gross premiums” includes the following: assessments (*Bankers Life Co. v. Richardson* (1923) 192 Cal. 113; *Western Travelers Accident Association v. Johnson* (1936) 14 Cal.App.2d 306); the consideration paid for annuity contracts (*Equitable Life Assur. Society v. Johnson* (1942) 53 Cal.App.2d 49); the full sums received by bail bond agents from those desiring bail bonds (*Groves v. City of Los Angeles* (1953) 40 Cal.2d 751).

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TAX ON INSURERS LAW

Fees which are charged all applicants for membership in a mutual company do not constitute gross premiums within the meaning of this section, since they are not a part of the consideration paid for insurance, when the membership entitles the holder only to apply for insurance and not to receive it and the fees are not returnable if insurance is rejected or the member elects not to apply for it. *State Farm Mutual Automobile Insurance Co. v. Carpenter* (1939) 31 Cal.App.2d 178.

Amounts retained by an insurance company from wages due its employees participating in a voluntary retirement plan are not insurance premiums under this section where the company has no profit motive in establishing the plan. *California-Western States Life Insurance Company v. State Board of Equalization* (1957) 151 Cal.App.2d 559.

Gross premiums include amounts paid as reimbursement for additional expense incurred in selling insurance on an installment basis such as additional bookkeeping expense and collection expense. *Allstate Insurance Company v. State Board of Equalization* (1959) 169 Cal.App.2d 165.

Insurer developed "mini-net" plan pursuant to which existing group health insurance policyholders assumed the obligation to pay claims of the insured employees up to a certain "trigger-point" amount. Insurer was liable for claims above the trigger-point amount. Taxable gross premiums includes net premiums (calculated with reference to amounts paid out of policyholders' funds) as well as loading (amounts paid directly to the insurer). *Metropolitan Life Insurance Co. v. State Board of Equalization* (1982) 32 Cal.3d 649.

Although a service charge in connection with a premium financing plan is part of taxable gross premiums, the interest charged in connection with the plan is nontaxable investment income. *Mercury Casualty Co. v. State Board of Equalization* (1983) 141 Cal.App.3d 43.

Auto club members paying for insurance obtained through the club on an installment basis paid the club a \$1 service fee along with each payment. The club retained the fee and forwarded the balance to the insurer. The service fee was part of the insurer's taxable gross premiums. *Interinsurance Exchange v. State Board of Equalization* (1984) 156 Cal.App.3d 606.

ERISA does not preempt California's method of taxation pursuant to *Metropolitan Life Insurance Co. v. State Board of Equalization* (1982) 32 Cal.3d 649. *General Motors Corp. v. California State Board of Equalization* (9th Cir. 1987) 815 F.2d 1305, cert. denied (1988) 485 U.S. 941.

The "true economic substance" of the insurer's SFGP policy was that the employer bears the bulk of the insurance risk in acting as an independent insurer for all claims below the liability limit; that the employer in performing its independent obligations under the SFGP is not acting as "a mere agent" of the insurer for the collection of premiums; and the obligations of the insurer are not "inextricably intertwined" with those of the employers. Accordingly tax applies only to the amounts actually paid as premiums to the insurer and not to the amount of claims paid from employer funds. *Aetna Life Ins. Co. v. State Board of Equalization* (1992) 11 Cal.App.4th 1207.

An insurer issuing minimum premium policies taxable under *Metropolitan Life Ins. Co. v. State Board of Equalization* (1982) 32 Cal.3d 649 was not denied equal protection even though the same policies issued to policyholders who are Taft-Hartley Trusts would be taxed differently. *Great-West Life Assurance v. State Board of Equalization* (1993) 19 Cal.App.4th 1553.

Where only one factor in *Metropolitan Life Ins. Co. v. State Board of Equalization* (1982) 32 Cal.3d 649 was present (regarding claims administration by an insurance company) and the other three factors were absent and the trigger point was well above 100 percent of expected claims thereby shifting the insurance risk to the employer, the employer, and not the insurance company, was the insurer as to the pretrigger point claims paid from employer funds, and the insurance company was therefore not liable for gross premiums tax on that aspect of the contracts. *Prudential Ins. Co. v. State Board of Equalization* (1993) 21 Cal.App.4th 458.

The amount of an insurer's taxable gross premiums does not include the amount of claims paid out of contractholder's funds when the insurer is fulfilling an administrative services contract and not providing insurance. *Lincoln National Life Insurance Co. v. State Board of Equalization* (1994) 30 Cal.App.4th 1411.

**Return premiums.**—The term "return premiums" refers to that portion of the gross premiums received by an insurance company which has been unearned and which the company is lawfully bound to return. It does not include dividends paid to members of a mutual company. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.

The cash or surrender values paid upon the cancellation of life policies are not "return premiums," but values paid on the cancellation of pure annuity contracts prior to the starting of payments to the annuitant are by contract "return premiums" within the constitutional meaning. *Equitable Life Assur. Society v. Johnson* (1942) 53 Cal.App.2d 49.

**Dividends.**—A mutual life insurance company is not subject to taxation on that portion of a premium which is satisfied by the application of a dividend representing the excess of the previous year's premium over the actual cost of the insurance furnished. *Mutual Benefit Life Insurance Co. v. Richardson* (1923) 192 Cal. 369. [Cf. *Northwestern Mutual Life Insurance Co. v. Roberts* (1918) 177 Cal. 540.]

**Doing business.**—An insurance association organized in California to take over the business of a Nebraska association was, in accepting in this State the applications of the members of the foreign association to continue their insurance, doing business in this State. Assuming, however, that the contracts of insurance were made in their entirety outside the State, all amounts received on such contracts were subject to the tax, the association having withdrawn from the other State and thereafter conducted its business under its California license, and all payments being sent by mail to its office in California. *Western Travelers Accident Association v. Johnson* (1936) 14 Cal.App.2d 306.

A foreign insurance company is not subject to tax on premiums remitted directly to its home office by mail after it had actually ceased to do business in California and its certificate of authority had expired. *People v. Alliance Life Insurance Co.* (1944) 65 Cal.App.2d 808.

Renewal premiums collected at the Nevada office of a life insurance company which was incorporated in California and has its principal place of business in this State from policyholders residing in states in which the company is not licensed to do business are "premiums received \* \* \* upon its business done in this State" within the meaning of this section, where all of the company's services to these policyholders, other than the collection of premiums, are rendered to them at its home office in California. *Occidental Life Insurance Co. v. State Board of Equalization* (1956) 139 Cal.App.2d 468.

Amounts designated by an inter-insurance exchange as savings to its subscribers but which amounts were actually paid by the exchange to attorney-in-fact were part of taxable gross premiums and should not be considered part of savings within the words "returned to subscribers and/or credited to their accounts as savings" as used in Ins. Code section 1530. *Industrial Indem. Exch. v. State Board of Equalization* (1945) 26 Cal.2d 772.

**Reciprocal or inter-insurance exchanges.**—In computing its gross premiums tax liability for the business year 1964, the taxpayer, a reciprocal inter-insurance exchange, was not entitled to deduct savings dividends which it declared to subscribers (policyholders) in 1964 on policies expiring in 1965, to the extent that those dividends remained on the taxpayer's books on December 31, 1964, as declared and unpaid. Such amounts were not "credited" to the accounts of subscribers, within the meaning of Section 1530 of the Insurance Code, until such time as the policies in question expired and the formerly unpaid dividends were either paid to the subscribers or applied by them against renewal premiums. *California State Auto. Assn. Inter-Insurance Bureau v. State Board of Equalization* (1974) 44 Cal.App.3d 13.

**12222. Funds for annuity purchases.** Funds accepted by a life insurer under an agreement which provides for an accumulation of funds to purchase annuities at future dates may be considered as "gross premiums received" either upon receipt or upon the actual application of such funds to the purchase of annuities. However, any interest credited to funds accumulated while under the latter alternative shall also be included in "gross premiums received," and any funds taxed upon receipt, including any interest later credited thereto, shall not be subject to taxation upon the purchase of annuities. Each life insurer shall signify on its premium tax return covering premiums for the calendar year 1957 its election between such two alternatives. Thereafter an insurer shall not change such election without the consent of the commissioner. Any such funds taxed as "gross premiums" shall, in the event of withdrawal of the funds before their actual application to the purchase of annuities, be eligible to be included as "return premiums" if eligible therefor under the provisions of Section 28 of Article XIII of the Constitution.

**History.**—Added by Stats. 1961, p. 1983, operative January 1, 1962. Derived from former Section 12252.5, Stats. 1974, p. 620, operative November 6, 1974, substituted "Section 28" for "Section 14%."

### Article 3. Basis of Tax for Title Insurers

- § 12231. "Income upon business" as basis of tax.
- § 12232. "Investments" defined.
- § 12233. Title insurer doing trust business. [Repealed]

**12231. "Income upon business" as basis of tax.** In the case of an insurer transacting title insurance in this State, the basis of the tax is, in respect to each year, all income upon business done in this State, except:

- (a) Interest and dividends.
- (b) Rents from real property.
- (c) Profits from the sale or other disposition of investments.
- (d) Income from investments.

**History.**—Added by Stats. 1961, p. 1983, operative January 1, 1962. Derived from former Section 12253.

**Measure of tax.**—"All income" of a title insurer for purposes of the insurance tax does not include amounts paid by independent underwritten title companies for their own negligence. *Title Insurance Co. v. State Board of Equalization* (1992) 4 Cal.4th 715.

12232. **“Investments” defined.** “Investments,” as used in Section 12231, includes property acquired by an insurer in the settlement or adjustment of claims against it but excludes investments in title plants and title records. Income derived directly or indirectly from the use of title plants and title records is included in the basis of the tax.

**History.**—Added by Stats. 1961, p. 1983, operative January 1, 1962. Derived from former Section 12254.

12233. **Title insurer doing trust business.** [Repealed by Stats. 1996, Ch. 1063, in effect January 1, 1997.]

#### Article 4. Principal Office Deduction

[Repealed effective June 8, 1976, by Stats. 1975, Ch. 938]

12241. **Principal office deduction; limitation.** [Repealed.]

#### Article 5. Prepayments

[Repealed by Stats. 1969, p. 1473, in effect August 14, 1969, operative January 1, 1970.]

- § 12251. Prepayment remittance schedule. [Repealed.]
- § 12251.5. Time for prepayment; after 1966. [Repealed.]
- § 12251.7. Prepayment; commencing business. [Repealed.]
- § 12252. Amount of prepayment; election. [Repealed.]
- § 12253. Title insurers; basis for prepayment. [Repealed.]
- § 12254. “Investments.” [Repealed.]
- § 12255. Other than title insurers; basis for prepayment. [Repealed.]
- § 12255.5. Deduction of real estate taxes. [Repealed.]
- § 12256. Prepayments credited on annual tax. [Repealed.]
- § 12257. Overpayment. [Repealed.]
- § 12258. Prepayment deficiency. [Repealed.]
- § 12259. Filing of prepayment return. [Repealed.]
- § 12260. Duplicate copy forwarded to board. [Repealed.]
- § 12261. Deliver return to commissioner with remittance. [Repealed.]
- § 12262. Extension for filing. [Repealed.]
- § 12263. Interest on extension. [Repealed.]
- § 12264. Penalty. [Repealed.]
- § 12265. Interest on amounts less than one-fourth of annual tax. [Repealed.]
- § 12266. State Compensation Insurance Fund. [Repealed.]

#### Article 5. Prepayments \*

- § 12251. Prepayments.
- § 12252. Notification; amounts due. [Repealed.]
- § 12253. Remittance of prepayment.
- § 12253.5. Remittance of prepayment—1983 calendar year.
- § 12254. Amount of prepayment.
- § 12255. Extension of time.
- § 12256. Payments credited on annual tax.
- § 12257. Overpayment.
- § 12258. Penalty and interest.
- § 12259. State Compensation Insurance Fund.
- § 12260. Relief from prepayments.

12251. **Prepayments.** For the calendar year 1970, and each calendar year thereafter, insurers transacting insurance in this state and whose annual tax for the preceding calendar year was five thousand dollars (\$5,000) or more shall make prepayments of the annual tax for the current calendar year imposed by Section 28 of Article XIII of the California Constitution and this

\* Article 5 was added by Stats. 1969, p. 1473, in effect August 14, 1969, operative January 1, 1970.

part, provided that no prepayments shall be made with respect to the tax on ocean marine insurance underwriting profit or any retaliatory tax.

*History.*—Added by Stats. 1974, p. 620, operative November 6, 1974, substituted “Section 28” for “Section 14%.”

**12252. Notification; amounts due.** [Repealed by Stats. 1982, Ch. 327, in effect June 30, 1982.]

**12253. Remittance of prepayment.** Each insurer required to make prepayments shall remit them on or before each of the dates of April 1st, June 15th, September 15th and December 15th of the current calendar year. Remittances for prepayments shall be made payable to the Controller and shall be delivered to the office of the commissioner, accompanied by a prepayment form prescribed by the commissioner.

*History.*—Stats. 1982, Ch. 327, in effect June 30, 1982, operative October 1, 1982, substituted “April 1st . . . December 15th” for “May 15th . . . November 15th” after “dates of”.

**12253.5. Remittance of prepayment—1983 calendar year.** For prepayments in the 1983 calendar year only, each insurer required to make prepayments shall remit them on or before January 1, 1983, in addition to the dates specified in Section 12253. The amount of that prepayment shall be 25 percent of the amount of the annual insurance tax liability reported on the return of the insurer for the 1981 calendar year.

*History.*—Added by Stats. 1982, Ch. 327, in effect June 30, 1982.

**12254. Amount of prepayment.** (a) The amount of each prepayment shall be 25 percent of the amount of annual insurance tax liability reported on the return of the insurer for the preceding calendar year.

(b) In establishing the prepayment amount of an insurer who has acquired the business of another insurer, the amount of tax liability of the acquiring insurer reported for the preceding calendar year shall be deemed to include the amount of tax liability of the acquired insurer reported for that year.

*History.*—Stats. 1978, Ch. 827, effective January 1, 1979, deleted “, less any deduction for real estate taxes taken thereon in accordance with Section 12241” following “calendar year” in (a). Stats. 1982, Ch. 327, in effect June 30, 1982, operative October 1, 1982, substituted “25” for “26%” before “percent” in subdivision (a).

**12255. Extension of time.** The commissioner, for good cause shown, may extend for not to exceed 10 days the time for making a prepayment. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within or prior to the period for which the extension may be granted. Interest at the rate prescribed by Section 12631 shall be paid for the period of time for which the extension is granted.

*History.*—Stats. 1982, Ch. 327, in effect June 30, 1982, substituted “Interest . . . 12631” for “No interest” at the beginning of the third sentence.

**12256. Payments credited on annual tax.** All amounts paid under this article, other than penalties and interest, shall be allowed as a credit on the annual tax imposed by Section 28 of Article XIII of the California Constitution and this part.

*History.*—Added by Stats. 1974, p. 621, operative November 6, 1974, substituted “Section 28” for “Section 14%.”

**12257. Overpayment.** If the total amount of prepayments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of annual tax and, at the election of the insurer, may be credited against the amounts due and payable for the first prepayment of the following year. Any amount of the overpayment not so credited shall be allowed as a credit or refund under Article 2 (commencing with Section 12977) of Chapter 7 of this part.

*History.*—Added by Stats. 1984, Ch. 39, effective March 19, 1984, added “at the election . . . credited shall” after “annual tax and”.

**12258. Penalty and interest.** Any insurer who fails to pay any prepayment within the time required shall pay a penalty of 10 percent of the amount of the required prepayment, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the due date of the prepayment until the date of payment but not for any period after the due date of the annual tax. Assessments of prepayment deficiencies may be made in the manner provided by deficiency assessments of the annual tax.

*History.*—Added by Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1978, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the first sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5” for “Section 19269” in the first sentence.

**12259. State Compensation Insurance Fund.** The provisions of this article apply to the State Compensation Insurance Fund as well as to private insurers.

**12260. Relief from Prepayments.** Notwithstanding any other provision of this article, the commissioner may relieve an insurer of its obligation to make prepayments where the insurer establishes to the satisfaction of the commissioner that either the insurer has ceased to transact insurance in this state, or the insurer’s annual tax for the current year will be less than five thousand dollars (\$5,000).

*History.*—Added by Stats. 1971, p. 3528, operative on and after January 1, 1972.

### CHAPTER 3.5. RETALIATORY TAXES, LICENSES AND FEES \*

§ 12281.	Annual return.
§ 12282.	Failure to file timely return; penalty. [Repealed.]
§ 12283.	Commissioner’s recommendations of tax. [Repealed.]
§ 12284.	Time for making annual assessment. [Repealed.]
§ 12285.	Application for correction. [Repealed.]
§ 12286.	Increase or decrease of assessment. [Repealed.]
§ 12287.	Due date; payment; interest and penalty.
§ 12288.	Deficiency assessments.
§ 12289.	Provisions applicable to retaliatory taxes.
§ 12290.	Date for interest, penalties and periods of limitation. [Repealed.]

**12281. Annual return.** Annually, on or before April 1, each insurer subject to the imposition of retaliatory exactions shall file, in duplicate, with the Insurance Commissioner, in accordance with regulations promulgated by him or her, a retaliatory tax return in the form prescribed by the Insurance

\* Chapter 3.5 was added to Part 7 by Stats. 1961, p. 984, in effect March 31, 1961.

Commissioner. Annually, on or before June 15th, each insurer subject to the imposition of ocean marine taxes shall amend its retaliatory tax return by filing, in duplicate, with the Insurance Commissioner, an amended ocean marine retaliatory tax return in the form prescribed by the Insurance Commissioner.

**History.**—Added by Stats. 1961, p. 984, in effect March 31, 1961. Stats. 1967, p. 2601, in effect November 8, 1967, substituted “imposition of retaliatory exactions” for a specific reference to the Insurance Code in the first sentence and added most of the language following “making and filing” in the last sentence. Stats. 1990, Ch. 767, in effect September 13, 1990, substituted “April 1” for “May 1st”, added “or her” after “him” and “in the . . . Commissioner” after “return”, and deleted “information” after “retaliatory tax” in the first sentence; deleted the former second and third sentences which provided, “The regulations may define categories of insurers which the Insurance Commissioner reasonably believes will not owe any retaliatory taxes, licenses or fees. Insurers falling within such categories shall be exempt from making and filing an annual retaliatory tax information return and shall be relieved of the penalty with respect to an annual return imposed by Section 12282.”; and added the second sentence.

**12282. Failure to file timely return; penalty.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

**12283. Commissioner’s recommendations of tax.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

**12284. Time for making annual assessment.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

**12285. Application for correction.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

**12286. Increase or decrease of assessment.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

**12287. Due date; payment; interest and penalty.** Except for the retaliatory tax due on ocean marine insurance, the retaliatory tax shall be due and payable on or before April 1 and shall be paid by remittance made payable to the Controller. Any additional retaliatory tax due on account of ocean marine insurance shall be due and payable on or before June 15 and shall be paid by remittance made payable to the Controller. If not paid on or before the due date, the amount of retaliatory tax shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from April 1 (June 15 with respect to any additional ocean marine retaliatory tax) until the date of payment, and there shall be paid in addition to the tax and interest, a penalty of 10 percent of the amount of the retaliatory tax.

**History.**—Added by Stats. 1961, p. 985, in effect March 31, 1961. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the second sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5” for “Section 19269” in the second sentence. Stats. 1990, Ch. 767, in effect September 13, 1990, substituted “Except for . . . instance, the” for “The”, and “April 1” for “December 1st” in the first sentence, added the second sentence, and substituted “April 1 (June 15 . . . retaliatory tax)” for “December 1st” in the third sentence.

**12288. Deficiency assessments.** Deficiency assessments for retaliatory taxes may be made in the same manner as is provided by this part for other deficiency assessments.

**History.**—Added by Stats. 1961, p. 985, in effect March 31, 1961.



**12289. Provisions applicable to retaliatory taxes.** All provisions of this part not in conflict with the provisions of this chapter shall apply to the assessment, levy, payment, collection and correction of retaliatory taxes, and the rights and remedies of the State and of insurers provided by this part shall apply to retaliatory taxes.

*History.—Added by Stats. 1961, p. 985, in effect March 31, 1961.*

**12290. Date for interest, penalties and periods of limitation.** [Repealed by Stats. 1990, Ch. 767, in effect September 13, 1990.]

#### CHAPTER 4. ASSESSMENT AND EFFECT OF TAX \*

- Article 1. Tax Returns and Initial Payments. §§ 12301–12307.
- 2. Initial Assessments. §§ 12411–12414.
- 3. Deficiency Assessments. §§ 12421–12435.
- 4. Effect of Tax. §§ 12491–12495.

##### Article 1. Tax Returns and Initial Payments

**12301. Due date.** The taxes imposed upon insurers by the provisions of Section 28 of Article XIII of the Constitution and of this part, except with respect to taxes on ocean marine insurance and retaliatory taxes, are due and payable annually on or before April 1st of the year following the calendar year in which the insurer engaged in the business of insurance or transacted insurance in this state. The taxes imposed with respect to ocean marine insurance are due and payable on or before June 15th of such year.

*History.—Added by Stats. 1961, p. 1984, operative January 1, 1962. Stats. 1969, p. 1474, in effect August 14, 1969, operative January 1, 1970, added “except with respect to taxes on ocean marine insurance and retaliatory taxes” and substituted “April 1st” for “June 15” in the first sentence, and added the second sentence. Stats. 1974, p. 621, operative November 6, 1974, substituted “Section 28” for “Section 14%.”*

**12302. Insurance tax return in duplicate.** On or before April 1st (or June 15th with respect to taxes on ocean marine insurance) every person who is subject to any tax imposed by the provisions of Section 28 of Article XIII of the Constitution or of this part, in respect to the preceding calendar year shall file, in duplicate, an insurance tax return with the commissioner in such form as the commissioner may prescribe. The return shall show such information pertaining to its insurance business in this state as will reflect the basis of its tax as set forth in Chapters 2 (commencing with Section 12071) and 3 (commencing with Section 12201) of this part, the computation of the amount of tax for the period covered by the return, the total amount of any tax prepayments made pursuant to Article 5 (commencing with Section 12251) of Chapter 3 of this part, and such other information as the commissioner may require to carry out the purposes of this part. Separate returns shall be filed with respect to the following kinds of insurance:

- (a) Life insurance (or life insurance and disability insurance).
- (b) Ocean marine insurance.
- (c) Title insurance.

\* Stats. 1961, p. 1984, operative January 1, 1962, amended the title of Chapter 4 by substituting “Effect of Tax” for “Levy”.

(d) Insurance other than life insurance (or life insurance and disability insurance), ocean marine insurance or title insurance.

**History.**—Added by Stats. 1961, p. 1984, operative January 1, 1962. Stats. 1963, p. 5013 (Extra Session), in effect October 31, 1963, added the words “the total amount of any prepayments made pursuant to Article 5 (commencing with Section 12251) of Chapter 3 of this part” to the second sentence. Stats. 1969, p. 1475, in effect August 14, 1969, operative January 1, 1970, substituted “April 1st” for “June 15” and added the exception in parentheses for ocean marine insurance, in the first sentence. Stats. 1974, p. 621, operative November 6, 1974, substituted “Section 28” for “Section 14%.”

**12303. Return to be signed; oath or declaration.** Every return required by this article to be filed with the commissioner shall be signed by the insurer or an executive officer of the insurer and shall be made under oath or contain a written declaration that it is made under the penalties of perjury. A return of a foreign insurer may be signed and verified by its manager residing within this State. A return of an alien insurer may be signed and verified by the United States manager of such insurer.

**History.**—Added by Stats. 1961, p. 1984, operative January 1, 1962.

**12304. Blank forms furnished.** Blank forms of returns shall be furnished by the commissioner on application, but failure to secure such a form shall not relieve any insurer from making or filing a timely return.

**History.**—Added by Stats. 1961, p. 1985, operative January 1, 1962.

**12305. Remittance of tax.** The insurer required to file a return shall deliver the return in duplicate, together with a remittance payable to the Controller, for the amount of tax computed and shown thereon, less any prepayments made pursuant to Article 5, (commencing with Section 12251) of Chapter 3 of this part, to the office of the commissioner.

**History.**—Added by Stats. 1961, p. 1985, operative January 1, 1962. Stats. 1963, p. 5014 (Extra Session), in effect October 31, 1963, added the words “less any prepayments made pursuant to Article 5 (commencing with Section 12251) of Chapter 3 of this part.”

**12306. Extension of time.** The commissioner, for good cause shown, may extend for not to exceed 30 days the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with the commissioner within or prior to the period for which the extension may be granted.

**History.**—Added by Stats. 1961, p. 1985, operative January 1, 1962. Stats. 1965, p. 1831, in effect September 17, 1965, substituted “30” days for “10” days.

**12307. Interest on extension.** Any insurer to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from April 1st until the date of payment.

**History.**—Added by Stats. 1961, p. 1985, operative January 1, 1962. Stats. 1969, p. 1475, in effect August 14, 1969, operative January 1, 1970, substituted “April 1st” for “June 15th”. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for one-half of 1 percent.” Stats. 1982, Ch. 5. First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from”. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5” for “Section 19269”.

## Article 2. Initial Assessments

- § 12411. Duplicate copy of return forwarded to board.
- § 12412. Initial assessment of tax.
- § 12413. Notice of initial assessment.
- § 12414. Overpayments may be offset.

**12411. Duplicate copy of return forwarded to board.** A duplicate copy of each tax return received by the commissioner shall be promptly forwarded to the board.

*History.—Added by Stats. 1961, p. 1985, operative January 1, 1962.*

**12412. Initial assessment of tax.** Upon receipt of the duplicate copy of the return of an insurer the board shall initially assess the tax in accordance with the data as reported by the insurer on the return.

*History.—Added by Stats. 1961, p. 1985, operative January 1, 1962.*

**12413. Notice of initial assessment.** The board shall promptly transmit notice of its initial assessment to the commissioner and the Controller, and if the initial assessment differs from the amount computed by the insurer, notice shall also be given to the insurer.

*History.—Added by Stats. 1961, p. 1985, operative January 1, 1962.*

**12414. Overpayments may be offset.** In making an initial assessment the board may offset an overpayment for one calendar year against an underpayment for another calendar year, against penalties, and against any interest on an underpayment.

*History.—Added by Stats. 1961, p. 1985, operative January 1, 1962.*

## Article 3. Deficiency Assessments

- § 12421. Determination of correct amount of tax.
- § 12422. Proposed deficiency assessment.
- § 12423. Estimate where no return filed.
- § 12424. Board to assess deficiency.
- § 12425. More than one deficiency assessment.
- § 12426. Overpayments may be offset.
- § 12427. Notice of deficiency assessment.
- § 12428. Petition for redetermination.
- § 12429. Oral hearing.
- § 12430. Decrease or increase before finality date.
- § 12431. Finality date.
- § 12432. Statute of limitations.
- § 12433. Waiver of limitation.
- § 12434. Service of notice.
- § 12435. Copies of notice.

**12421. Determination of correct amount of tax.** As soon as practicable after an insurer's or surplus line broker's return is filed, the commissioner shall examine it, together with any information within his or her possession or that may come into his or her possession, and he or she shall determine the correct amount of tax of the insurer or surplus line broker.

*History.—Added by Stats. 1961, p. 1985, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, substituted "an insurer's or surplus line broker's" for "the" after "as practicable after", added "or her" after "information within his" and after "come into his", added "or she" after "possession, and he", and added "or surplus line broker" after "of the insurer".*

12422. **Proposed deficiency assessment.** (a) If the commissioner determines that the amount of tax disclosed by the insurer's tax return and assessed by the board is less than the amount of tax disclosed by his or her examination, he or she shall propose in writing to the board a deficiency assessment for the difference. The proposal shall set forth the basis for the deficiency assessment and the details of its computation.

(b) If the commissioner determines that the amount of tax disclosed by the surplus line broker's tax return is less than the amount of tax disclosed by his or her examination, he or she shall propose in writing to the board a deficiency assessment for the difference. The proposal shall set forth the basis for the deficiency assessment and the details of its computation.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added subdivision designation "(a)", added "insurer's tax" after "disclosed by the", added "or her" after "disclosed by his", and added "or she" after "examination, he", in the first sentence of subdivision (a); and added subdivision (b).

**12423. Estimate where no return filed.** If an insurer or surplus line broker fails to file a return, the commissioner may require a return by mailing notice to the insurer or surplus line broker to file a return by a specified date or he or she may without requiring a return, or upon no return having been filed pursuant to the demand therefor, make an estimate of the amount of tax due for the calendar year or years in respect to which the insurer or surplus line broker failed to file the return. The estimate shall be made from any available information which is in the commissioner's possession or may come into his or her possession, and the commissioner shall propose in writing to the board a deficiency assessment for the amount of the estimated tax. The proposal shall set forth the basis of the estimate and the details of the computation of the tax.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added "or surplus line broker" after "If an insurer", after "to the insurer" and after "which the insurer", added "or she" after "date or he", in the first sentence; and added "or her" after "come into his" in the second sentence.

**12424. Board to assess deficiency.** The board shall make a deficiency assessment on the basis of a proposal submitted to it by the commissioner pursuant to Section 12422 or 12423.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962.

**12425. More than one deficiency assessment.** One or more deficiency assessments may be proposed or made for the amount of tax due for one or for more than one calendar year.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962.

**12426. Overpayments may be offset.** In making a deficiency assessment the board may offset an overpayment for one calendar year against an underpayment for another calendar year, against penalties and against any interest on an underpayment.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962.

**12427. Notice of deficiency assessment.** The board shall promptly notify the insurer or surplus line broker of a deficiency assessment made against the insurer or surplus line broker.

*History.*—Added by Stats. 1961, p. 1986, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added "or surplus line broker" after "notify the insurer" and after "against the insurer".

**12428. Petition for redetermination.** An insurer or surplus line broker against whom a deficiency assessment is made under Section 12424 or 12425 may petition for redetermination of the deficiency assessment within 30 days after service upon the insurer or surplus line broker of the notice thereof, by filing with the board a written petition setting forth the

grounds of objection to the deficiency assessment and the correction sought. At the time the petition is filed with the board a copy of the petition shall be filed with the commissioner.

If a petition for redetermination is not filed within the period prescribed by this section, the deficiency assessment becomes final and due and payable at the expiration of that period.

History.—Added by Stats. 1961, p. 1986, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “An insurer” and after “upon the insurer” in the first sentence of the first paragraph.

**12429. Oral hearing.** If a petition for redetermination of a deficiency assessment is filed within the time allowed under Section 12428, the board shall reconsider the deficiency assessment and, if the insurer or surplus line broker has so requested in the petition, shall grant an oral hearing for the presentation of evidence and argument before the board or its authorized representative. The board shall give the petitioner and the commissioner at least 20 days’ notice of the time and place of hearing. The hearing may be continued from time to time as may be necessary.

History.—Added by Stats. 1961, p. 1986, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “if the insurer” in the first sentence.

**12430. Decrease or increase before finality date.** The board may decrease or increase the amount of the deficiency assessment before the deficiency assessment becomes final, but the amount may be increased only if a claim for the increase is asserted by the commissioner or the board at or before the hearing.

History.—Added by Stats. 1961, p. 1987, operative January 1, 1962.

**12431. Finality date.** The order or decision of the board upon a petition for redetermination of a deficiency assessment becomes final 30 days after service on the insurer or surplus line broker of a notice thereof, and any resulting deficiency assessment is due and payable at the time the order or decision becomes final.

History.—Added by Stats. 1961, p. 1987, operative January 1, 1962. Former Section 12431, repealed by Stats. 1961, p. 1985, provided for an annual assessment of taxes upon insurers. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “on the insurer”.

**12432. Statute of limitations.** Except for a notice given pursuant to Section 12430 or 12431, or in the case of fraud or the failure to file a return, every notice of a deficiency assessment shall be given within four years after April 1st of the year following the year for which the amount of tax is assessed or within four years after the return is filed, whichever period expires the later. In the case of failure to file a return the notice shall be given within eight years after April 1st of the year following the year for which the amount of tax is assessed.

History.—Added by Stats. 1961, p. 1987, operative January 1, 1962. Stats. 1969, p. 1475, in effect August 14, 1969, operative January 1, 1970, substituted “April 1st” for “June 15th” in the first and second sentences.

**12433. Waiver of limitation.** If before the expiration of the time prescribed in Section 12432 for giving of a notice of deficiency assessment the insurer or surplus line broker has consented in writing to the giving of the notice after such time, the notice may be given at any time prior to the

expiration of the time agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

**History.**—Added by Stats. 1961, p. 1987, operative January 1, 1962. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “assessment the insurer” in the first sentence.

**12434. Service of notice.** Any notice required by this article shall be placed in a sealed envelope, with postage paid, addressed to the insurer or surplus line broker at his or her address as it appears in the records of the commissioner or the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**History.**—Added by Stats. 1961, p. 1987, operative January 1, 1962. Stats. 1974, Ch. 610, effective January 1, 1975, revised and expanded the section and deleted the reference to section 1013 of the C. C. P. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “to the insurer” and added “or her” after “at his” in the first sentence.

**12435. Copies of notice.** A copy of each notice of a deficiency assessment made by the board shall be transmitted to the commissioner and the Controller. The Controller shall keep an appropriate record of all such assessments and any payments thereon.

**History.**—Added by Stats. 1961, p. 1987, operative January 1, 1962. Former Section 12434, repealed by stats. 1961, p. 1985, provided for notice to insurers whose tax had been assessed in an amount differing from the amount of tax liability as computed by the insurer.

## Article 4. Effect of Tax

- § 12491. Lien of tax.
- § 12492. When lien attaches.
- § 12493. Lien has effect of execution.
- § 12494. Removal of lien.
- § 12495. No dissolution or bankruptcy discharge until taxes paid.

**12491. Lien of tax.** Every tax levied upon an insurer under the provisions of Article XIII of the Constitution and of this part is a lien upon all property and franchises of every kind and nature belonging to the insurer, and has the effect of a judgment against the insurer.

**12492. When lien attaches.** Every lien attaches as of 12:01 a.m. on the first day of March of the calendar year in which the tax is levied.

**History.**—Stats. 1967, p. 2244, operative January 1, 1968, substituted “as of 12:01 a.m. on the first day of” for “on the first Monday in” March.

**12493. Lien has effect of execution.** Every lien has the effect of an execution duly levied against all property of a delinquent insurer.

**12494. Removal of lien.** No judgment is satisfied nor lien removed until either:



- (a) The taxes, interest, penalties, and costs are paid.
- (b) The insurer's property is sold for the payment thereof.

History.—Stats. 1959, p. 1892, in effect April 1, 1959, added "interest" in (a).

**12495. No dissolution or bankruptcy discharge until taxes paid.** No court shall make and enter a final discharge in bankruptcy or decree of dissolution, nor shall any county clerk or the Secretary of State file a discharge, decree, or any other document by which the term of existence of a corporation is reduced or terminated until all taxes, interest, penalties, and costs are paid and discharged.

History.—Stats. 1959, p. 1892, in effect April 1, 1959, inserted "interest," between "taxes," and "penalties."

## CHAPTER 5. PAYMENT AND COLLECTION

- Article 1. Generally. §§ 12601-12602.
- 2. Interest and penalties. §§ 12631-12637.
- 3. Suits for Taxes. §§ 12676-12682.
- 4. Recovery of Erroneous Refunds. § 12691.

### Article 1. Generally

- § 12601. Payment to Controller.
- § 12602. Electronic funds transfer.

**12601. Payment to Controller.** Amounts of taxes, interest and penalties not remitted to the commissioner with the original return of the insurer shall be payable to the Controller.

History.—Stats. 1961, p. 1987, operative January 1, 1962, amended and renumbered Section 12623 as Section 12601. The section was completely reworded and provisions imposing interest and penalty were eliminated.

**12602. Electronic Funds Transfer.** (a) On and after January 1, 1994, and before January 1, 1995, each insurer whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer, as defined by Section 45 of the Insurance Code. On and after January 1, 1995, each insurer whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 of the Insurance Code for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any insurer required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that an insurer's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or circumstances beyond the

insurer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that insurer shall be relieved of the penalty provided in paragraph (1).

(3) Any insurer seeking to be relieved of the penalty provided in paragraph (1) shall file with the Department of Insurance a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

**History.**—Added by Stats. 1993, Ch. 661, in effect January 1, 1994. Stats. 1995, Ch. 721, in effect January 1, 1996, added “on or” after “demand account occurs” in the first sentence of subdivision (b); substituted “insurer” for “person” after “Any” in paragraph (1) of, and substituted “an insurer’s” for “a person’s” after “Insurance finds that”, substituted “payment by an . . . with subdivision (a)” for “a timely payment” after “failure to make”, substituted “insurer’s” for “person’s” after “circumstance beyond the”, and substituted “that insurer” for “the person” after “of willful neglect,” in paragraph (2) of, substituted “insurer” for “person” after “Any”, added “with the Department of Insurance” after “(1) shall file”, and substituted “claim for relief is based” for “person bases his or her claim for relief with the Department of Insurance” after “upon which the” in paragraph (3) of, subdivision (c).

## Article 2. Interest and Penalties \*

§ 12631.	Interest and penalty
§ 12632.	Deficiency assessment; interest and penalty.
§ 12633.	Penalty for failure to file return.
§ 12634.	Negligence penalty.
§ 12635.	Fraud penalty.
§ 12636.	Excusable delay.
§ 12636.5.	Application of payment to delinquent tax liabilities.
§ 12637.	Interest rate. [Repealed.]
§ 12637.	Relief from interest—disaster.

**12631. Interest and Penalty.** Any insurer who fails to pay any tax, except a tax determined as a deficiency assessment by the board under Article 3 (commencing with Section 12421) of Chapter 4, within the time required, shall pay a penalty of 10 percent of the amount of the tax in addition to the tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the due date of the tax until the date of payment.

**History.**—Added by Stats. 1961, p. 1988, operative January 1, 1962. Stats. 1969, p. 1476, in effect August 14, 1969, operative January 1, 1970, substituted “the due date of the tax” for “June 15th of the year in which the tax became due and payable”. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Sesssion, in effect May 27, 1982, added “(commencing with Section 12421)” after “Article 3” and substituted “adjusted . . . 19269” for “rate . . . thereof” before “from”. Stats. 1982, Ch. 454, in effect January 1, 1983, deleted “of this part” after “Chapter 4” and substituted “rate of 1 percent per month, or fraction thereof,” for “adjusted annual rate established pursuant to Section 19269” before “from”. Stats. 1983, Ch. 142, in effect January 1, 1984, substituted “adjusted . . . 19269” for “rate of . . . thereof” before “from”. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted,” deleted “annual” before “rate,” added “per month, or fraction thereof”, before “established” and substituted “Section 6591.5” for “Section 19269”.

**Penalty.**—The penalty imposed by former Section 3668b of the Political Code (similar to the penalty imposed by this section) cannot be avoided on the ground that the taxpayer mailed its remittance to the wrong address, with the result that it was not received until after the delinquency date. *Camden Fire Insurance Association v. Johnson* (1941) 42 Cal.App.2d 528.

**12632. Deficiency assessment; interest and penalty.** An insurer who fails to pay any deficiency assessment when it becomes due and payable shall, in addition to the deficiency assessment, pay a penalty of 10 percent of the amount of the deficiency assessment, exclusive of interest and penalties. The amount of any deficiency assessment, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof,

\* Former Article 2, Suits for Taxes, was renumbered as Article 3 by Stats. 1961, p. 1988, operative January 1, 1962.

established pursuant to Section 6591.5, from the date on which the amount, or any portion thereof, would have been payable if properly reported and assessed until the date of payment.

**History.**—Added by Stats. 1961, p. 1988, operative January 1, 1962. Stats. 1969, p. 1476, in effect August 14, 1969, operative January 1, 1970, substituted “the date on which” for “June 15th of the year in which”. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the second sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per month, or fraction thereof,” before “established” and substituted “Section 6591.5” for “Section 19269”.

**12633. Penalty for failure to file return.** When a deficiency assessment is made on the basis of a proposal submitted by the commissioner pursuant to Section 12423 a penalty of 10 percent of the amount of the deficiency assessment shall be added thereto.

**History.**—Added by Stats. 1961, p. 1988, operative January 1, 1962.

**12634. Negligence penalty.** When a deficiency assessment is made on the basis of a proposal submitted by the commissioner pursuant to Section 12422 and any part of the deficiency is due to negligence or intentional disregard of this part or rules and regulation adopted to implement this part but without intent to defraud, a penalty of 10 percent of the amount of the deficiency assessment shall be added thereto.

**History.**—Added by Stats. 1961, p. 1988, operative January 1, 1962.

**12635. Fraud penalty.** If any part of a deficiency for which a deficiency assessment is made is due to fraud, a penalty of 25 percent of the amount of the deficiency assessment in addition to any other penalties shall be added thereto.

**History.**—Added by Stats. 1961, p. 1988, operative January 1, 1962.

**12636. Excusable delay.** If the board finds that an insurer’s failure to make a timely return or payment is due to reasonable cause and to circumstances beyond the insurer’s control, and which occurred despite the exercise of ordinary care and in the absence of willful neglect, the insurer may be relieved of the penalty provided by Section 12258, 12282, 12287, 12631, 12632, or 12633.

Any insurer seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

**History.**—Added by Stats. 1980, Ch. 944, operative January 1, 1981. Stats. 1989, Ch. 768, in effect January 1, 1990, added “12282, 12287.”.

**12636.5. Application of payment to delinquent tax liabilities.** Every payment on a delinquent tax shall be applied as follows:

- (a) First, to any interest due on the tax.
- (b) Second, to any penalty imposed by this part.
- (c) The balance, if any, to the tax itself.

**History.**—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

**12637. Interest rate.** [Repealed by Stats. 1985, Ch. 20, effective July 1, 1985.]

**12637. Relief from interest—disaster.** If the board finds that a person's failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 12258, 12287, 12307, 12631, and 12632. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

**History.**—Added by Stats. 1989, Ch. 14 of the First Extraordinary Session in effect November 7, 1989.

### Article 3. Suits for Taxes

§ 12676.	Suit for collection of tax.
§ 12677.	Procedure.
§ 12678.	Attorney General.
§ 12679.	Service of summons.
§ 12680.	Writ of attachment.
§ 12681.	Controller's certificate prima facie evidence.
§ 12682.	Payment of judgment.

**12676. Suit for collection of tax.** At any time within four years after any amount of tax becomes due and payable, and at any time within two years after any deficiency assessment of tax becomes due and payable, the Controller may bring an action in the name of the State in a court of competent jurisdiction in any county or city and county in this State in which the Attorney General has an office to collect the delinquent taxes, together with interest, and penalties.

**History.**—Stats. 1961, p. 1988, operative January 1, 1962, completely revised this section. The section previously provided for suit on or before April 30th of the year following the calendar year in which the taxes, interest or penalties became delinquent and for the suit to be brought in the County of Sacramento.

**12677. Procedure.** The provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to an action brought pursuant to this article.

**12678. Attorney General.** The Attorney General shall prosecute the action.

**12679. Service of summons.** If an insurer's right to do business has been forfeited or its corporate powers suspended, service of summons may be made upon the persons designated by law to be served as agents or officers of the insurer, and these persons are the agents of the insurer for all purposes necessary in order to prosecute the action. In the case of corporations whose powers have been suspended, the persons constituting the board of directors may defend the action.

**12680. Writ of attachment.** A writ of attachment may be issued in the action in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

**History.**—Stats. 1961, p. 1989, operative January 1, 1962, repealed former Section 12680, which provided for trial of the action in the County of Sacramento, and renumbered former Section 12681 as Section 12680. Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

12681. **Controller's certificate prima facie evidence.** In the action, a certificate of the Controller or of the secretary of the board, showing unpaid taxes against an insurer is prima facie evidence of:

- (a) The assessment of the taxes.
- (b) The delinquency.
- (c) The amount of the taxes, interest, and penalties due and unpaid to the State.
- (d) That the insurer is indebted to the State in the amount of taxes, interest, and penalties appearing unpaid.
- (e) That there has been compliance with all the requirements of law in relation to the assessment of the taxes.

History.—Stats. 1943, p. 1997, in effect August 4, 1943, substituted the provisions for the certificate in place of a certification of the "Record of Assessments of Insurance Companies." Stats. 1959, p. 1893, in effect April 1, 1959, inserted "interest" under (c) and (d) and deleted "and levy" from (e). Stats. 1961, p. 1989, operative January 1, 1962, renumbered former Section 12681 as present Section 12680 and renumbered former Section 12682 as Section 12681.

12682. **Payment of judgment.** Payment of the amount of the judgment recovered in the action shall be made to the Controller.

History.—Stats. 1961, p. 1989, operative January 1, 1962, renumbered former Section 12682 as present Section 12681 and renumbered former Section 12683 as Section 12682.

#### Article 4. Recovery of Erroneous Refunds

§ 12691. Erroneous refund. Action.

12691. **Erroneous refund. Action.** The Controller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in any county or city and county in this State in which the Attorney General has an office. The action shall be brought in the name of the State and the Attorney General shall prosecute the action.

History.—Added by Stats. 1961, p. 1989, operative January 1, 1962.

#### CHAPTER 6. SUSPENSION OF RIGHTS OF DELINQUENT INSURERS

- Article 1. Revocation of Certificate of Authority. §§ 12801-12803
- 2. Suspended Corporate Insurers. §§ 12832-12834.

##### Article 1. Revocation of Certificate of Authority

- § 12801. Controller's annual report of delinquent insurers.
- § 12802. Revocation of certificate of authority; hearing.
- § 12803. Restoration of certificate.

12801. **Controller's annual report of delinquent insurers.** Annually, between December 10th and 15th, the Controller shall transmit to the commissioner a statement showing the names of all insurers that failed to pay on or before December 10th the whole or any portion of the tax that became delinquent in the preceding June or which has been unpaid for more than 30 days from the date it became due and payable as a deficiency assessment under this part or the whole or any part of the interest or penalties due with respect to the tax. The statement shall show the amount of the tax, interest, and penalties due from each insurer.

**History.**—Stats. 1943, p. 2837, in effect December 31, 1943, substituted “December” in place of “November” and changed the month when the tax became delinquent from October to November. Stats. 1959, p. 1893, in effect April 1, 1959, substituted “June” for “November” and inserted “interest or” before “penalties due,” and “interest” in last sentence. Stats. 1961, p. 1989, operative January 1, 1962, deleted “Insurance” before “commissioner” and added the language beginning after “June” and ending with “this part” in the first sentence.

**12802. Revocation of certificate of authority; hearing.** The commissioner shall give at least 10 days’ notice in writing to each insurer of the time and place of a hearing to show cause why its certificate of authority shall not be revoked. Upon hearing, the commissioner shall revoke the certificate of authority of each insurer which does not establish to his satisfaction at or before the hearing that the tax, interest, and penalties due from it have been paid.

**History.**—Stats. 1959, p. 1893, in effect April 1, 1959, inserted “interest,” before “and penalties due.” Stats. 1961, p. 1989, operative January 1, 1962, deleted “Insurance” before “commissioner” in the first sentence.

**12803. Restoration of certificate.** An insurer whose certificate of authority has been revoked pursuant to this article may have the certificate restored by the commissioner during the period for which it was issued upon the payment by the insurer of all taxes, interest, and penalties due from it and the payment to the commissioner of a fee of five hundred dollars (\$500).

**History.**—Stats. 1959, p. 1893, in effect April 1, 1959, inserted “interest,” before “and penalties due.” Stats. 1961, p. 1990, operative January 1, 1962, deleted “Insurance” before “commissioner.” Stats. 1965, p. 1831, in effect September 17, 1965, substituted “five hundred dollars (\$500)” for “ten dollars (\$10).”

**Note.**—For provisions relating to revivor of corporate powers suspended or forfeited prior to June 12, 1939, see Corporations Code Sections 5702–5705.

## Article 2. Suspended Corporate Insurers

- § 12832. Exercise of rights after suspension unlawful.
- § 12833. Jurisdiction of offense.
- § 12834. Evidence; certified copies of lists of delinquent corporations.

**12832. Exercise of rights after suspension unlawful.** Every person who attempts or purports to exercise any of the rights, privileges or powers of a suspended domestic insurer or attempts to transact any intrastate business in this state in behalf of a forfeited foreign insurer is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

**History.**—Stats. 1957, p. 746, in effect September 11, 1957, eliminated provision for minimum fine and period of confinement, and decreased maximum confinement in county jail to a period not exceeding one year. Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “two thousand dollars (\$2,000)” for “one thousand dollars” after “exceeding” in the second sentence.

**12833. Jurisdiction of offense.** The county in which occurs any part of the attempted exercise of the powers or any part of the transaction of business has jurisdiction of the offense.

**12834. Evidence; certified copies of lists of delinquent corporations.** The certified copies of lists of corporations which have failed to pay the taxes, interest, and penalties imposed upon insurers transmitted by the Controller to county clerks and county recorders for filing

or recording in their respective offices, or a copy of these lists certified by the Controller, are receivable in evidence in any court in lieu of the original record of suspension or forfeiture on file with the Controller, and are prima facie evidence of the truth of all statements contained.

**History.**—Stats. 1959, p. 1893, in effect April 1, 1959, inserted “interest, and penalties” after “taxes.” Stats. 1973, Ch. 665, effective January 1, 1974, added “or recording”.

## CHAPTER 7. CANCELLATIONS AND REFUNDS \*

- Article 1. Cancellations. §§ 12951–12952.
- 2. Refund or Credit for Collected Taxes. §§ 12977–12984.

### Article 1. Cancellations †

- § 12951. Cancellation of assessment.
- § 12952. Commissioner to notify board.

**12951. Cancellation of assessment.** If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed and the insurer or surplus line broker against whom the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer or surplus line broker of any cancellation authorized. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

**History.**—Stats. 1961, p. 1990, operative January 1, 1962, repealed former Section 12951 which defined “taxes,” and amended and renumbered former Section 12952 as Section 12951. The section was completely reworded. Stats. 1963, p. 3110, in effect September 20, 1963, added the words “that fact” in the first sentence, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the first and third sentences. Stats. 1965, p. 2055, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in the first and third sentences. Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the first and third sentences. Stats. 1985, Ch. 591, effective January 1, 1986, substitutes “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in the first and third sentences. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the third sentence. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “any amount” for “an amount in excess of fifty thousand dollars (\$50,000)” after “If” at the beginning of the section; substituted a comma for “and” after “in its records”; deleted “to the State Board of Control” after “certify”; added “determined to be” before “assessed in excess”; substituted “, and” for “. If the State Board of Control approves, it shall” after “assessment was made”; deleted “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally assessed, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the Controller and the board.” as the third sentence; and added “Any proposed determination . . . of that determination.” to the end of the section. Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “and the insurer” in the first sentence and after “to the insurer” in the second sentence.

**12952. Commissioner to notify board.** If the commissioner discovers an amount assessed by the board which he believes to have been illegally assessed, he shall notify the board in writing of such fact, together with a statement of any information he may have concerning the correctness of the assessment.

**History.**—Stats. 1961, p. 1990, operative January 1, 1962, amended and renumbered former Section 12952 pertaining to the cancellation of an illegal assessment as Section 12951 and added the new Section 12952.

\* Stats. 1961, p. 1990, operative January 1, 1962, amended the title of Chapter 7 from “corrections” to “cancellations and refunds.”

† Stats. 1961, p. 1990, operative January 1, 1962, amended the title of Article 1 from “generally” to “cancellations.”



## Article 2. Refund or Credit for Collected Taxes ‡

§ 12977.	Credits and refunds.
§ 12978.	Time for presentation of claim.
§ 12979.	Form and content of claim.
§ 12980.	Failure to file claim.
§ 12981.	Notice of action of claim.
§ 12982.	Transmittal of claim to board.
§ 12983.	Interest; Insurers.
§ 12983.1.	Interest; Surplus line brokers.
§ 12983.5.	Timely refund—disallowance of interest.
§ 12984.	Disallowance of interest.

**12977. Credits and refunds.** (a) If the board determines that any tax, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records of the board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid, and certify the excess to the Controller for credit or refund.

(b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer or surplus line broker under this part and refund the balance.

(c) Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

**History.**—Amended by Stats. 1957, p. 2470, in effect September 11, 1957; Stats. 1959, p. 1894, in effect April 1, 1959; Stats. 1959, p. 4380, in effect September 18, 1959; Stats. 1961, p. 1990, operative January 1, 1962. Stats. 1963, p. 3110, in effect September 20, 1963, substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the third sentence. Stats. 1965, p. 2055, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250).” Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” and added the word “State” preceding “Board” in the first and second sentences. Stats. 1982, Ch. 327, in effect June 30, 1982, added “(a)” before the first sentence, substituted “ten thousand dollars (\$10,000)” for “five thousand dollars (\$5,000)” after “exceeding” in the third sentence of new subdivision (a), added subdivision “(b),” and added “(c)” before the last sentence. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “ten thousand dollars (\$10,000)” in subdivision (a). Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the third sentence. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, certify” for “and shall certify to the State Board of Control” after “records of the board”; substituted “, and certify the excess” for “. If approved by the State Board of Control, the excess shall be certified” after “by whom paid”; deleted “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining approval of the State Board of Control may certify the amount to the Controller for credit or refund.” in subdivision (a) deleted subdivision (b) which read: “Notwithstanding the provisions of subdivision (a), approval of the State Board of Control shall not be required with regard to a refund resulting from prepayment of taxes during and from the calendar year.”; relettered former subdivision “(c)” as “(b)”; and added subdivision (c). Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “from the insurer” in subdivision (b).

**12978. Time for presentation of claim.** No credit or refund shall be allowed or approved after four years after April 1st of the year following the year for which the overpayment was made, or with respect to a deficiency assessment made under Article 3 (commencing with Section 12421) of Chapter 4 after six months from the date the deficiency assessment becomes final, or after six months from the date of the overpayment, whichever period expires the later, unless a claim therefor is filed with the commissioner or the board within that period.

‡ Stats. 1961, p. 1990, operative January 1, 1962, amended the title of Article 2 from “Credit for Collected Taxes” to “Refund or Credit for Collected Taxes.”

**History.**—Stats. 1961, p. 1991, operative January 1, 1962, completely revised this section. Stats. 1969, p. 1476, in effect August 14, 1969, operative January 1, 1970, substituted “April 1st” for “June 15th”. Stats. 1982, Ch. 454, in effect January 1, 1983, added “(commencing with Section 12421)” after “Article 3,” deleted “of this part” after “Chapter 4” and substituted “that” for “such” after “within.”

**12979. Form and content of claim.** Every claim for refund or credit shall be in writing and shall state the specific grounds upon which it is founded.

**History.**—Added by Stats. 1957, p. 2471, in effect September 11, 1957. Stats. 1961, p. 1991, operative January 1, 1962, added “refund or” before “credit.”

**Content of claim.**—Statements on the back of payment checks that the payments were under protest subject to claims for refund did not constitute valid claims for refund because the statements failed to state the required specific grounds upon which the refunds were claimed. The insurer therefore had failed to exhaust its administrative remedies. *Mercury Casualty Co. v. State Board of Equalization* (1986) 179 Cal.App.3d 34.

**12980. Failure to file claim.** Failure to file a claim for refund or credit within the time prescribed in this article constitutes a waiver of any demand against the State on account of overpayment.

**History.**—Added by Stats. 1957, p. 2471, in effect September 11, 1957. Stats. 1961, p. 1991, operative January 1, 1962, added “refund or” before “credit.”

**12981. Notice of action on claim.** Within 30 days after disallowing any claim for refund or credit in whole or in part the board shall mail notice of its action to the claimant at its address as it appears in the records of the board.

**History.**—Added by Stats. 1957, p. 2471, in effect September 11, 1957. Stats. 1961, p. 1991, operative January 1, 1962, added “refund or” before “credit.”

**12982. Transmittal of claim to board.** If the claim for refund or credit is presented to the commissioner he shall forthwith transmit it to the board, together with a statement of any information he may have concerning the subject of the claim.

**History.**—Added by Stats. 1957, p. 2471, in effect September 11, 1957. Stats. 1961, p. 1991, operative January 1, 1962, added “refund or” before “credit” and deleted “Insurance” before “commissioner.”

**12983. Interest; Insurers.** Interest shall be allowed upon the amount of any overpayment of tax by an insurer pursuant to this part at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, “monthly period” means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified in writing that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

**History.**—Added by Stats. 1959, p. 1894, in effect April 1, 1959. Stats. 1961, p. 1991, operative January 1, 1962, substituted the language beginning with “due date” for “date of the overpayment to the date on which the credit is used but not later than April 1st following the date of approval.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “12 percent” for “6 percent.” Stats. 1982, Ch. 5, First Extra Session in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “from” in the first sentence. Stats. 1984, Ch. 1020, operative July 1, 1985, adds “modified” before “adjusted”, deletes “annual” before “rate”, adds “per annum” before “established” and substitutes “Section 6591.5” for “Section 19269” in the first line. Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “monthly” for “annum” after “adjusted rate per”, substituted “first day of. . . . In addition, a” for “due date of the tax for the year for which the overpayment was made, but no” after “from the”, and added “as follows” after “shall be paid” in the first sentence. Stats. 1995, Ch. 721, in effect January 1, 1996, added “by an insurer” after “overpayment of tax” in the first sentence of the first paragraph and made “The interest shall be paid as follows:” the second paragraph.

**12983.1. Interest; Surplus line brokers.** Interest shall be allowed upon the amount of any overpayment of tax by a surplus line broker pursuant to this part at the rate of 1 percent per calendar month or fraction thereof, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, “monthly period” means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified in writing that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

**History.**—Added by Stats. 1995, Ch. 721, in effect January 1, 1996.

**12983.5. Timely refund—disallowance of interest.** If any overpayment of taxes imposed by this part is refunded or credited within 90 days after the due date of the tax for the year for which the overpayment was made, no interest shall be allowed on that overpayment.

**History.**—Added by Stats. 1982, Ch. 327, in effect June 30, 1982.

**12984. Disallowance of interest.** (a) If the board determines that any overpayment has been made intentionally or made not incident to a bona fide and orderly discharge of a liability reasonably assumed by the insurer or surplus line broker to be imposed by law, no interest shall be allowed on the overpayment.

(b) If any insurer or surplus line broker which has filed a claim for refund requests the board to defer action on its claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the insurer or surplus line broker requests the board to defer action on the claim.

**History.**—Added by Stats. 1961, p. 1992, operative January 1, 1962. Stats. 1978, Ch. 827, effective January 1, 1979, lettered existing first paragraph as (a), and added new paragraph (b). Stats. 1995, Ch. 721, in effect January 1, 1996, added “or surplus line broker” after “by the insurer” in subdivision (a) and added “or surplus line broker” after “If any insurer” and after “which the insurer” in subdivision (b).

CHAPTER 8. TAXPAYER'S SUITS

§ 13101.	Enjoining collection forbidden.
§ 13102.	Necessity of refund claim.
§ 13103.	Suit for refund; limitation.
§ 13104.	When refund claim not acted upon.
§ 13105.	Failure to bring suit within time.
§ 13106.	Disposition of judgment.
§ 13107.	Interest.
§ 13108.	Judgment for assignee forbidden.

**13101. Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or against any officer of the State to prevent or enjoin the assessment or collection under this part of any tax or any amount of tax required to be collected.

**History.**—Stats. 1961, p. 1992, operative January 1, 1962, repealed former Section 13101, which defined “taxes,” and added the present Section 13101.

**13102. Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed in accordance with Article 2 of Chapter 7 of this part.

**History.**—Stats. 1961, p. 1992, operative January 1, 1962, repealed former Section 13102, which permitted an action for recovery of tax paid on a void assessment, and added the present Section 13102.

**Grounds not raised.**—Grounds not raised in insurer’s claim for refund may not be raised in suit for refund. *American Alliance Ins. Co. v. State Board of Equalization* (1982) 134 Cal.App.3d 601.

**13103. Suit for refund; limitation.** Within 90 days after the mailing of the notice of the board’s action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any county or city and county in the State in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. The Attorney General shall defend the action.

**History.**—Stats. 1961, p. 1992, operative January 1, 1962, repealed former Section 13103, which provided a period of limitation to April 1st of the calendar year following the year in which the taxes are due, and added the present Section 13103.

**13104. When refund claim not acted upon.** If the board fails to mail notice of its action on a claim for refund or credit within six months after the claim is filed with the board, the claimant may, prior to mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

**History.**—Stats. 1961, p. 1992, operative January 1, 1962, repealed former Section 13104, which required payment under protest prior to suit, and added the present Section 13104.

**13105. Failure to bring suit within time.** Failure to bring a suit or an action within the time specified constitutes a waiver of all demands against the State on account of an alleged overpayment.

**History.**—Stats. 1961, p. 1992, operative January 1, 1962, repealed former Section 13105, which provided for filing copies of the protest with the board and the Insurance Commissioner, and added the present Section 13105.

**13106. Disposition of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

*History.*—Stats. 1961, p. 1993, operative January 1, 1962, repealed former Section 13106, which provided that payment under protest was not voluntary, and added the present Section 13106.

**13107. Interest.** In any judgment, interest shall be allowed, subject to the same limitations as are prescribed by Section 12984, at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Controller.

*History.*—Stats. 1961, p. 1993, operative January 1, 1962, repealed former Section 13107, which provided that an action might be brought only upon the grounds stated in the protest, and added the present Section 13107. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “12 percent” for “6 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “upon.” Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per annum” before “established” and substituted “Section 6591.5” for “Section 19269”.

**13108. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff when the action is brought by or in the name of an assignee of the insurer paying the tax, interest, or penalties, or by any person other than the insurer that has paid the tax, interest, or penalties.

*History.*—Stats. 1959, p. 1895, in effect April 1, 1959, added the words “interest or penalties” after each word “tax” in the former Section 13113. Stats. 1961, p. 1993, operative January 1, 1962, repealed former Section 13108, which provided for service of summons, and renumbered former Section 13113 as the present Section 13108.

## CHAPTER 9. DISPOSITION OF PROCEEDS \*

- § 13151. Insurance Tax Fund.
- § 13152. Disposition of fund.
- § 13153. State Compensation Insurance Fund; payment.

**13151. Insurance Tax Fund.** All taxes, interest, and penalties collected under this part shall be transmitted to the State Treasurer to be deposited in the State Treasury to the credit of the Insurance Tax Fund, which is hereby created. Upon transmitting moneys to the State Treasurer, the commissioner shall furnish the Controller with a record of the amounts transmitted and the insurers from whom the moneys have been received.

*History.*—Added by Stats. 1961, p. 1993, operative January 1, 1962. Stats. 1966, p. 643 (First Extra Session), in effect October 6, 1966, deleted “shall be revenue of the fiscal year in which received and” from the first sentence.

**13152. Disposition of fund.** The money in the Insurance Tax Fund shall, upon order of the Controller, be drawn therefrom for refunds under this part or be transferred to the General Fund of the State.

*History.*—Added by Stats. 1961, p. 1993, operative January 1, 1962.

**13153. State Compensation Insurance Fund; payment.** On or before the April 1st, the State Compensation Insurance Fund shall pay into the State Treasury to the credit of the Insurance Tax Fund the sum required under the provisions of Section 12203 of this code.

*History.*—Added by Stats. 1961, p. 1993, operative January 1, 1962. Derived from former Section 12626. Stats. 1969, p. 1476, in effect August 14, 1969, operative January 1, 1970, substituted “April 1st” for “15th day of June”.

\* Chapter 9 was added to Part 7 by Stats. 1961, p. 1993, operative January 1, 1962.

CHAPTER 10. ADMINISTRATION †

§ 13170. Authorization.

13170. **Authorization.** The board, the Insurance Commissioner, and the Controller may each prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part for which the agency has a constitutional or statutory responsibility. Each agency may prescribe the extent to which any rule and regulation it has adopted shall be applied without retroactive effect.

† Chapter 10 was added by Stats. 1982, Ch. 684, in effect January 1, 1983.

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- General Motors Corp. v. California State Board of Equalization (9th Cir. 1987) 815  
     F.2d 1305, cert. denied (1988) 485 U.S. 941 .....Const. XIII, Sec. 28; 12221  
 Great-West Life Assurance v. State Board of Equalization (1993) 19 Cal.App.4th 1553 .....Const. XIII, Sec. 28; 12221  
 Groves v. City of Los Angeles (1949) 93 Cal.App.2d 17 .....Const. XIII, Sec. 28; 12102, 12204  
 Groves v. City of Los Angeles (1953) 40 Cal.2d 751 .....Const. XIII, Sec. 28; 12102, 12204, 12221

**H**

- Hopkins; Consolidated Title Security Co. v. (1934) 1 Cal.2d 414 .....Const. XIII, Sec. 28; 12102, 12204

**I**

- Illinois Com. Mens Assn. v. State Board of Equalization (1983) 34 Cal.3d 839,  
     appeal dismissed (1984) 466 U.S. 933 .....Const. XIII, Sec. 28; 12201  
 Industrial Idem. Exch. v. State Board of Equalization (1945) 26 Cal.2d 772 .....Const. XIII, Sec. 28; 12221  
 Interinsurance Exchange v. State Board of Equalization (1984) 156 Cal.App.3d 606 .....Const. XIII, Sec. 28; 12221

**J**

- J. C. Penney Insurance Company v. State Board of Equalization (1979)  
     94 Cal.App.3d .....Const. XIII, Sec. 28

**K****L**

- Lincoln National Life Insurance Co. v. State Board of Equalization  
     (1994) 30 Cal.App.4th 1411 .....Const. XIII, Sec. 28; 12221

## M

- Marsh & McLennan of California, Inc. v. City of Los Angeles (1976)  
62 Cal.App.3d 108 .....Const. XIII, Sec. 28; 12204
- Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco (1982)  
129 Cal.App.3d 876 .....Const. XIII, Sec. 28; 12204
- McColgan; Edward Brown & Sons v. (1942) 53 Cal.App.2d 504 .....Const. XIII, Sec. 28; 12204
- Mercury Casualty Co. v. State Board of Equalization (1983) 141 Cal.App.3d 43 .....Const. XIII, Sec. 28; 12221
- Mercury Casualty Co. v. State Board of Equalization (1986) 179 Cal.App.3d 34 ..... 12979
- Metropolitan Life Insurance Co. v. State Board of Equalization (1982) 32 Cal.3d 649 .....Const. XIII, Sec. 28; 12221
- Mutual Benefit Life Insurance Co. v. Richardson (1923) 192 Cal. 369 .....Const. XIII, Sec. 28; 12221
- Mutual Life Ins. Co. v. City of Los Angeles (1990) 50 Cal.3d 402 .....Const. XIII, Sec. 28; 12204

## N

- Northwestern Mutual Life Insurance Co. v. Johnson (1936) 8 Cal.2d 42 .....Const. XIII, Sec. 28
- Northwestern Mutual Life Insurance Co. v. Roberts (1918) 177 Cal. 540 .....Const. XIII, Sec. 28; 12003, 12221
- Northwestern Mutual Life Insurance Co. v. State Board of Equalization  
(1946) 73 Cal.App.2d 548 .....Const. XIII, Sec. 28

## O

- Occidental Life Insurance Co. v. State Board of Equalization (1956)  
139 Cal.App.2d 468 .....Const. XIII, Sec. 28; 12221
- Occidental Life Insurance Co. v. State Board of Equalization (1982)  
135 Cal.App.3d 845 .....Const. XIII, Sec. 28; 12204

## P

- Pacific Coast Insurance Assn.; Carpenter v. (1937) 10 Cal.2d 304 .....Const. XIII, Sec. 28
- Pacific Mutual Life Insurance Co. v. State Board of Equalization (1996) 41 Cal.App.4th 1153 .....12202.1
- Peoples Mutual Life Insurance Co. v. Carpenter (1937) 10 Cal.2d 299 .....Const. XIII, Sec. 28; 12201
- Prudential Ins. Co. v. State Board of Equalization (1993) 21 Cal.App.4th 458 .....Const. XIII, Sec. 28; 12221

## Q

## R

## S

- State Compensation Insurance Fund v. State Board of Equalization (1993)  
14 Cal.App.4th 1295 .....12202.1
- State Farm Mutual Automobile Insurance Co. v. Carpenter (1939)  
31 Cal.App.2d 178 .....Const. XIII, Sec. 28; 12221

## T

- Title Insurance and Trust Co. v. Franchise Tax Board (1956) 145 Cal.App.2d 60 .....Const. XIII, Sec. 28; 12204
- Title Insurance Co. v. State Board of Equalization (1992) 4 Cal.4th 715 .....12231
- Transamerica Occidental Life Ins. Co. v. State Board of Equalization  
(1991) 232 Cal.App.3d 1048 .....Const. XIII, Sec. 28; 12202

## U

- United States Fidelity and Guaranty Co. v. State Board of Equalization (1956) 47 Cal.2d 384 .....Const. XIII, Sec. 28

## V

## W

- Western and Southern Life Insurance v. State Board of Equalization (1970)  
4 Cal.App.3d 21 .....Const. XIII, Sec. 28
- Western and Southern Life Insurance v. State Board of Equalization of California (1981)  
451 U.S. 648 .....Const. XIII, Sec. 28
- Western Travelers Accident Association v. Johnson (1936) 14 Cal.App.2d 306 .....Const. XIII, Sec. 28; 12221

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